

## SUBCHAPTER F—PREPAREDNESS

### PART 300—DISASTER PREPAREDNESS ASSISTANCE

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AUTHORITY: 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 45 FR 13464, Feb. 29, 1980, unless otherwise noted.

#### § 300.1 Definitions.

As used in this part:

(a) *The Act* means the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

(b) *Disaster assistance plans* means those plans which identify tasks needed to deliver disaster assistance and to avoid, reduce, or mitigate natural hazards; make assignments to execute those tasks; reflect State authorities for executing disaster assignments; and provide for adequate training of personnel in their disaster or mitigation assignments.

(c) *Mitigation* means the process of systematically evaluating the nature and extent of vulnerability to the effects of natural hazards present in society and planning and carrying out actions to minimize future vulnerability to those hazards to the greatest extent practicable.

(d) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands.

[54 FR 2128, Jan. 19, 1989]

#### § 300.2 Technical assistance.

Requests for technical assistance under section 201(b) of the Act shall be made by the Governor or his/her designated representative to the Regional Director.

(a) The request for technical assistance shall indicate as specifically as possible the objectives, nature, and du-

ration of the requested assistance; the recipient agency or organization within the State; the State official responsible for utilizing such assistance; the manner in which such assistance is to be utilized; and any other information needed for a full understanding of the need for such requested assistance.

(b) The request for assistance requires participation by the State in the technical assistance process. As part of its request for such assistance, the State shall agree to facilitate coordination among FEMA, local governments, State agencies and the businesses and industries in need of assistance in the areas of disaster preparedness and mitigation.

[54 FR 2129, Jan. 19, 1989]

#### § 300.3 Financial assistance.

(a) The Regional Director may provide to States upon written request by the State Governor or an authorized representative, an annual improvement grant up to \$50,000, but not to exceed 50 percent of eligible costs, except where separate legislation requires or permits a waiver of the State's matching share, e.g., with respect to "insular areas", as that term is defined at 48 U.S.C. 1469a(d). The nonFederal share in all cases may exceed the Federal share.

(b) The improvement grant shall be product-oriented; that is, it must produce something measurable in a way that determines specific results, to substantiate compliance with the grant workplan objectives and to evidence contribution to the State's disaster capability. The following list, *which is neither exhaustive nor ranked in priority order*, offers examples of eligible products under the Disaster Preparedness Improvement Grant Program:

(1) Evaluations of natural hazards and development of the programs and actions required to mitigate such hazards;

(2) Hazard mitigation activities, including development of predisaster natural hazard mitigation plans, policies, programs and strategies for State-level multi-hazard mitigation;

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(3) Updates to State disaster assistance plans, including plans for the Individual and Family Grant (IFG) Program, Public Assistance Program, Hazard Mitigation Grant Program, Disaster Application Center operations, damage assessment, etc.;

(4) Handbooks to implement State disaster assistance program activities;

(5) Exercise materials (EXPLAN, scenario, injects, etc.) to test and exercise procedures for State efforts in disaster response, including provision of individual and public assistance;

(6) Standard operating procedures for individual State agencies to execute disaster responsibilities for IFG, crisis counseling, mass care or other functional responsibilities;

(7) Training for State employees in their responsibilities under the State's disaster assistance plan;

(8) Report of formal analysis of State enabling legislation and other authorities to ensure efficient processing by the State of applications by governmental entities and individuals for Federal disaster relief;

(9) An inventory of updated inventory of State/local critical facilities (including State/local emergency operations centers) and their proximity to identified hazard areas;

(10) A tracking system of critical actions (identified in postdisaster critiques) to be executed by State or local governments to improve disaster assistance capabilities or reduce vulnerability to natural hazards.

(11) Plans or procedures for dealing with disasters not receiving supplementary Federal assistance;

(12) Damage assessment plans or procedures;

(13) Procedures for search and rescue operations; and,

(14) Disaster accounting procedures.

(c) The State shall provide quarterly financial and performance reports to the Regional Director. Reporting shall be by program quarter unless otherwise agreed to by the Regional Director.

[54 FR 2129, Jan. 19, 1989]

## PART 301 [RESERVED]

## PART 302—CIVIL DEFENSE-STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

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AUTHORITY: 50 U.S.C. app. 2251 *et seq.* Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 48 FR 44211, Sept. 28, 1983, unless otherwise noted.

### § 302.1 Purpose.

(a) The regulations in this part prescribe the requirements applicable to the Emergency Management Assistance (EMA) program for Federal financial contributions to the States, and through the States to their political subdivisions, for up to one half of the necessary and essential State and local civil defense personnel and administrative expenses, under section 205 of the Federal Civil Defense Act of 1950, as amended, and set forth the conditions under which such contributions will be made.

(b) The intent of this program is to increase civil defense operational capability at the State and local levels of government by providing Federal financial assistance so that personnel and other resources can be made available for essential planning and other administrative functions and activities required in order to accomplish this objective.

### § 302.2 Definitions.

Except as otherwise stated or clearly apparent by context, the definitions ascribed in this section to each of the listed terms shall constitute their meaning when used in the regulations in this part. Terms not defined in this part shall have the meaning set forth in their definition, if any, in the Federal Civil Defense Act of 1950, as amended.

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*).

(b) *Administrative expenses.* Necessary and essential expenses, other than personnel expenses as defined in this section, of a grantee and its subgrantees incurred in the administration of their civil defense programs, as detailed in CPG 1–3, Federal Assistance Handbook, and in CPG 1–32, FEMA Financial Assistance Guidelines.

(c) *Annual submission.* The State's annual request for participation in the contributions program authorized by section 205 of the Act. As specified in CPG 1–3, it includes staffing patterns (including job description changes), budget requirements, and any amendments to the State administrative plan, a request for funds covering the State and its subgrantees and program statements of work for the grantee and subgrantees under the Comprehensive Cooperative Agreement.

(d) *Approval.* All approvals by the Federal Emergency Management Agency (FEMA) as grantor agency required under the regulations in this part mean prior approval in writing signed by an authorized FEMA official. When failure to obtain prior approval of an action has not resulted and is not expected to result in any failure of compliance with a substantive requirement, and approval after the fact is not contrary to law (or regulation having the effect of law), written approval after the fact may be granted at the discretion of the authorized official.

(e) *CPG 1–3.* Civil Preparedness Guide entitled “Federal Assistance Handbook,” which sets forth detailed guidance on procedures that a State and, where applicable, its political subdivisions must follow in order to request financial assistance from the grantor agency. It also sets forth detailed requirements, terms, and conditions upon which financial assistance is granted under these regulations. Included are amendments by numbered changes. References to CPG 1–3 include provisions of any other volumes of the CPG series specifically referenced in CPG 1–3. Copies of the Civil Preparedness Guides and the Civil Preparedness Circulars may be ordered by FEMA Re-

gional Offices using FEMA Form 60–8 transmitted to FEMA, P.O. Box 8181, Washington, DC, 20024. One or more copies of CPG 1–3 have been distributed to each State and to each local government participating in the program under the regulations in this part. Copies of revisions and amendments are distributed to participating governments (addressed to the Emergency Management Coordinator) upon issuance.

(f) *Comprehensive Cooperative Agreement (CCA).* Provides for each State a single vehicle for applying for and receiving financial assistance for several discrete FEMA programs and for organizing and reporting on emergency management objectives and accomplishments, particularly under the funded programs.

(g) *Emergency management.* Refers to the activities and measures undertaken by a State, or one of its political subdivisions, to manage a “civil defense program” as defined and provided for by the Federal Civil Defense Act of 1950, as amended, including without limitation Title V, added by Public Law 96–342, and section 207, added by Public Law 97–86. Title V calls for an improved civil defense program that includes:

(1) A program structure for the resources to be used for attack-related civil defense; (2) a program structure for the resources to be used for disaster-related civil defense; and (3) criteria and procedures under which those resources planned for attack-related civil defense and those planned for disaster-related civil defense can be used interchangeably. Thus, emergency management includes “civil defense” for and operations in either attack-related or disaster-related emergencies. Section 207 allows Federal Civil Defense Act funds to be used for disaster preparedness and response if such use “is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.” Also 44 CFR part 312, Use of Civil Defense Personnel, Materials, and Facilities for Natural Disaster Purposes, provides terms and conditions for such use.

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(h) *Director*. The head of the grantor agency or another official of the Agency authorized in writing by the Director to act officially on behalf of the Director.

(i) *Forms prescribed by the grantor agency*. Forms prescribed by the grantor agency are identified in CPG 1-3 and may be ordered by FEMA Regional Offices using FEMA Form 60-8 transmitted to FEMA, P.O. Box 8181, Washington, DC, 20024.

(j) *Grantee*. A State that has received EMA funds as a result of having a State administrative plan, a statement of work, and an annual submission, all approved by the grantor agency as meeting the requirements prescribed in this part and in CPG 1-3 for necessary and essential State and local civil defense personnel and administrative expenses for a current Federal fiscal year.

(k) *Grantor agency*. The Federal Emergency Management Agency (FEMA).

(l) *Interstate civil defense authority*. Any civil defense authority established by interstate compact pursuant to section 201(g) of the Act.

(m) *Necessary and essential civil defense expenses*. Necessary and essential civil defense expenses are those required for the proper and efficient administration of the civil defense program of a grantee or a subgrantee as described in a State administrative plan and statement of work approved by the Regional Director as being consistent with the national plan (i.e., program) for civil defense and as meeting other requirements for civil defense prescribed by or under provisions of the Act.

(n) *OMB Circular A-87*. "Cost Principles Applicable to Grants and Contracts with State and Local Governments," promulgated by the Office of Management and Budget, Executive Office of the President, as published in the FEDERAL REGISTER (46 FR 9548) and subsequent amendments or revisions. (See CPG 1-32, Financial Assistance Guidelines).

(o) *OMB Circular A-102*. "Uniform Administrative Requirements for Grants-in-aid to State and Local Governments," promulgated by the Office of Management and Budget, Executive Of-

fice of the President (42 FR 45828) including amendments or revisions as published in the FEDERAL REGISTER. (See CPG 1-32, Financial Assistance Guidelines).

(p) *Emergency Operations Plan (EOP)*. State or local government Emergency Operations Plans identify the available personnel, equipment, facilities, supplies, and other resources in the jurisdiction and states the method or scheme for coordinated actions to be taken by individuals and government services in the event of natural, man-made and attack-related disasters.

(q) *Personnel expenses*. Necessary and essential civil defense expenses for personnel on the approved staffing pattern of a grantee or subgrantee (including but not necessarily limited to salaries, wages, and supplementary compensation and fringe benefits) for such employees appointed in accordance with State and local government laws and regulations under a system which meets Federal merit system and other applicable Federal requirements. Such expenses must be supported by job descriptions, payrolls, time distribution records, and other documentation as detailed in CPG 1-3. Personnel compensation and other costs incurred with regard to employees who are not on the civil defense staff but whose work serves the civil defense agency (e.g., State's budget and accounting office) may be charged as civil defense expense to the extent covered therefore in a federally approved indirect cost allocation plan.

(r) *Political subdivisions*. Local governments, including but not limited to cities, towns, incorporated communities, counties or parishes, and townships.

(s) *Regional Director*. A FEMA official delegated authority to exercise specified functions as they apply to grantees and subgrantees, within the geographical area of a particular region as identified (including address) in 44 CFR part 2.

(t) *State*. Any of the actual States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam, and the Virgin Islands.

(u) *State administrative plan (OMB 3067-0138)*. A one-time submission with

amendments as necessary to keep it current, the plan is a formal description of each participating State's total civil defense program and of related State and local laws, executive directives, rules, and plans and procedures, including personnel standards administered on a merit basis, updated emergency operations plans, travel regulations, indirect cost allocation plans and other information necessary to reflect the total civil defense program throughout the State. The plan also includes without limitation documentation as to administrative and financial systems to assure compliance with uniform grant-in-aid administrative requirements for States and subgrantees as required under OMB Circular A-102 and with other requirements relevant to the eligibility of the State and its political subdivisions for participation in financial assistance programs for civil defense purposes. Detailed requirements are prescribed in CPG 1-3. (Also see § 302.3.)

(v) *Statement of work.* Formal identification of specific actions to be accomplished by a State and its political subdivisions during the fiscal year for which Federal funds are being requested by the State. Submission is made to the FEMA Regional Director as part of the CCA Program Narrative.

(w) *Subgrantee.* A political subdivision of a State listed in the State's annual submission (or amendments thereto) as approved by the grantor agency (including any grantor agency-approved amendments thereto) as eligible to receive a portion of the Federal financial contribution provided for use within the State. The term includes Indian tribes when the State has assumed jurisdiction pursuant to State law and tribal regulations.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12520, Apr. 11, 1986]

### § 302.3 Documentation of eligibility.

In order to remain eligible for Federal financial contributions under the regulations in this part, each State must have on file with FEMA a current State administrative plan, an emergency operations plan for civil defense, and an annual submission (including a statement of work) which have been approved by the Regional Director as

being consistent with the national plan (i.e., program) for civil defense and as meeting the requirements of the regulations in this part and CPG 1-3. A State may allocate a portion of its EMA funds to an Indian tribe as a subgrantee where the State has assumed jurisdiction pursuant to State law and tribal regulations.

(a) *State administrative plans.* Every State has a State administrative plan file with FEMA and is required to keep the plan current through amendments as necessary. Such plans and amendments shall be reviewed by the Regional Director, who will advise the State in writing as to the effect, if any, changes will have on the continued eligibility of the State and its subgrantees. The Regional Director shall not, however, approve any amendments that would result in failure of the plan to meet these criteria:

(1) Provides for and is, pursuant to State law, in effect in all political subdivision of the State, mandatory on them, and, unless waived by the Director under section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214), administered or supervised by a single State administrative agency. In demonstrating that the State administrative plan for civil defense is in effect in all political subdivisions of the State and mandatory on them, the plan shall contain references to the applicable State statutes and local ordinances, executive orders and directives, and rules and regulations at the State and local level that establish the civil defense authority, structure, plans, and procedures, including those relating to emergency operations, throughout the State.

(2) Provides assurance of nonFederal contributions at least equal to Federal funding for necessary and essential costs eligible under this program from any source consistent with State law, but not from another Federal source unless Federal law specifically authorizes the use of funds from such Federal source as part of the State's share.

(3) Provides for the development of State and local government civil defense emergency operations plans pursuant to the standards approved by the Director.

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(4) Provides for the employment by the State of full-time civil defense director or deputy director.

(5) Provides for the establishment and maintenance of methods of personnel administration in public agencies administering or supervising the civil defense program, at both the State and local government levels, in conformity with the Standards for a Merit System of Personnel Administration (5 CFR part 900), which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, section 2, 84 Stat. 1908) prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970, as amended.

(6) Provides for the establishment of safeguards to prohibit State and local government employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(7) Provides that the State shall make such reports (including without limitation financial reports) in such form and content as the Director may require.

(8) Provides that the State and all subgrantees shall retain, in accordance with OMB Circular A-102, and make available to duly authorized representatives of the Director and the U.S. Comptroller General all books, records, and papers pertinent to the grant program for the purpose of making audits, examinations, excerpts, and transcripts necessary to conduct audits.

(9) Provides for establishment and maintenance of a financial management system of grant-supported activities of the State and all subgrantees which meets the federally prescribed standards promulgated in "Standards for Grantee Financial Management Systems," Attachment G of OMB Circular A-102.

(10) Provides for establishment and maintenance of procedures for monitoring and reporting grant program and project performance of the State and its subgrantees which meet the federally prescribed standards promul-

gated in Attachment I of OMB Circular A-102.

(11) Provides for the establishment and maintenance at the State level and by subgrantees of property management systems in accordance with the federally prescribed standards set forth in Attachment N of OMB Circular A-102.

(12) Provides for the establishment and maintenance at the State level and by subgrantees of systems for the procurement of supplies, equipment, construction, and other services, with the assistance of grant funds, in accordance with federally prescribed standards set forth in Attachment O of OMB Circular A-102.

(13) Provides for disbursement of the appropriate share of the Federal grant to the State's subgrantees in accordance with requirements detailed in CPG 1-3.

(14) Provides for the State's supervision and review of the civil defense plans, programs, and operations of its subgrantees to obtain conformity and compliance with Federal requirements and goals set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(15) Contains a Statement of Compliance with grantor agency regulations relating to nondiscrimination in FEMA programs (see 44 CFR part 7).

(16) Provides for timely submission to the appropriate Regional Director of amendments to the administrative plan as necessary to reflect the current laws, regulation, criteria, plans, methods, practices, and procedures for administration of the State's civil defense program and those of its subgrantees.

(17) Conforms to other Federal standards and requirements set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(18) Provides for performance of independent organizationwide audits by State and local governments that receive EMA funds of their financial operations, including compliance with certain provisions of Federal law and regulation.

(b) *Emergency Operations Plans (EOP's)*. (1) Each participating State shall have an EOP approved by the Regional Director and conforming with

the requirements for plan content set forth in this part and in CPG 1–3, and in CPG 1–8 “Guide for the Development of State and Local Emergency Operations Plans” and in CPG 1–8A, “Guide for the Review of State and Local Emergency Operations Plans,” which plan must provide for coordinated actions to be undertaken throughout the State in the event of attack and in the event of other disasters.

(2) Each subgrantee jurisdiction shall have a local EOP which conforms with the requirements for plan content as set forth in CPG 1–3 and CPG 1–8 and CPG 1–8A, and which has been approved by the local chief executive or other authorized official and accepted by the Governor or other authorized State official as being consistent with the State’s EOP.

(c) *Annual submission.* Each State should include in its annual CCA application the amount of EMA funding requested (see §302.5(c)). In order to participate for a particular Federal fiscal year, however, each State must also, within 60 days of receipt or notice of a formal allocation made pursuant to the criteria set forth in §302.5 and in accordance with procedures and criteria specified in CPG 1–3, submit to the Regional Director an approvable annual submission which includes:

(1) A request or amended request for a financial contribution from FEMA in a specified amount for civil defense personnel and administrative expenses; (see §302.5 (d) through (h)).

(2) Unless previously submitted for the particular Federal fiscal year, a statement of work for the State and proposed subgrantees or amendments to a statement of work previously submitted under the CCA.

(3) Staffing patterns (including new or revised job descriptions not previously submitted) on forms prescribed by FEMA for the civil defense organizations of the State and proposed subgrantees; and

(4) Any amendments to the State administrative plan required to reflect current status.

(d) *Approval of State administrative plan and annual submission.* If the State administrative plan and the annual submission are determined to be approvable, the Regional Director will so

notify the State in writing. The State administrative plan is a one-time submission. Unless amendments are necessary to meet Federal standards prescribed in the regulations in this part or in CPG 1–3 or to reflect changes in the State’s administrative structure, procedures, criteria, or activities, or unless a portion were conditionally approved by the Regional Director as provided for in paragraph (e) of this section, no approval regarding the State administrative plan will be required for a State which participated for the preceding Federal fiscal year.

(e) *Agreement for contribution.* Approval pursuant to procedures and criteria described in this part and in CPG 1–3 of an annual submission of a State whose administrative plan is approved and current shall constitute agreement between FEMA and the State as grantee for its participation and that of its subgrantees in this program during the Federal fiscal year covered by the approved annual submission on the basis of the requirements and conditions prescribed in this part, in CPG 1–3, and in other federally promulgated criteria referenced in this part. Refusal or failure to comply with such requirements and conditions may result in the grant or agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received.

(f) *Disapproval or conditional approval.* If a State’s administrative plan or annual submission is disapproved, the Regional Director will advise the State in writing, including the reasons for such disapproval and the revisions required for approval. The State shall have 30 days from date of such notification in which to submit its revisions. In the event more time is required in which to place the revisions into effect, the Regional Director may conditionally approve the State administrative plan or annual submission subject to the specified conditions to be met within a specified time, as agreed by the State and FEMA.

(g) *Appeals.* (1) Appeal from a Regional Director’s disapproval of a State

administrative plan or an annual submission or other final action as unjustified under the criteria in CPG 1-3 may be made by letter to the Associate Director, State and Local Programs and Support (FEMA), signed by an authorized State official and submitted through the Regional Director. Such appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Director within 30 days after receipt of the notification of disapproval. Failure to file its appeal on time may result in withdrawal of the State's allocation and the proposed funding being reallocated by the Director.

(2) A local jurisdiction that regards the final action on its subgrant made by a State as unjustified under the criteria in CPG 1-3 may submit an appeal through the State to the Regional Director. Upon receipt of such an appeal, the Regional Director shall forward the letter, together with all available pertinent documentation from the Regional Director's files and any additional documentation submitted by the local jurisdiction in support of its appeal, to the Associate Director, State and Local Programs and Support, for review and determination. The appeal shall contain all of the exceptions being taken by the State or local jurisdiction, and no exceptions will be determined piecemeal.

(3) No portion of the appellant State's allocation shall be reallocated by FEMA, and no portion of a local jurisdiction's allocation shall be reallocated by the State, pending determination of its appeal by the Director. The State and local jurisdiction (if applicable) will be notified in writing of the Director's decision, including a statement of the reasons therefor.

(Approved by Office of Management and Budget under control number 3067-0138)

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12520, Apr. 11, 1986]

#### § 302.4 Merit personnel systems.

(a) *Background.* Section 208 of the Intergovernmental Personnel Act, as amended (42 U.S.C. 4728) authorizes Federal agencies to require, as a condition of participation in Federal assistance programs, systems of a personnel administration consistent with personnel standards prescribed by the Of-

fice of Personnel Management (OPM). OPM has promulgated Standards for a System of Personnel Administration (5 CFR part 900) which prescribe intergovernmental personnel standards on a merit basis as a condition of eligibility in the administration of grant programs. OPM has approved FEMA adoption of these standards by the regulations in this part.

(b) *Standard.* Participation by each grantee and each subgrantee under the program covered in this part is subject to compliance with the following conditions regarding merit personnel systems:

Methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the civil defense program in conformity with the Standards for a Merit System of Personnel Administration 5 CFR part 900, which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, section 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 as amended.

Section 302.3(a)(5) of this part provides, in part, that State administrative plans that fail to provide for fulfilling this condition are not approvable.

#### § 302.5 Allocations and reallocations.

(a) The Director shall allocate the entire amount of funds available for the purposes of this program from the appropriation for each fiscal year. The allocation made to each State represents the total amount of funds available to pay the Federal share of necessary and essential civil defense personnel and administrative expenses of the State and its participating subdivisions during the fiscal year.

(b) The first calculation for developing the allocation for each State will be a formula distribution in accordance with section 205(d) of the Act, made by applying the following percentages to the total sum of Emergency Management Assistance in the President's budget request to Congress:

(1) Fifty (50) percent will be allocated on the basis of the prior-year State allocations, in fulfillment of the statutory requirement to give due regard to "the relative state of development of



civil defense readiness of the State” (State and local levels).

(2) Thirty-three (33) percent will be allocated on the basis of the ratio of the State’s population to the national population (50 States, District of Columbia, and Puerto Rico), in fulfillment of the statutory requirements to give due regard to “population” and to “the criticality of target and support areas and the areas which may be affected by natural disasters with respect to the development of the total civil defense readiness of the Nation.”

(3) Fifteen (15) percent will be divided equally among the 50 States, the District of Columbia, and Puerto Rico.

(4) In consonance with the statutory provision allowing the Director to prescribe other factors concerning the State allocations, the remaining two (2) percent will be held temporarily in reserve, to be used first to fund the four territories of the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Conditions peculiar to those areas make strict application of the mathematical formula in §302.5(b) inequitable. Therefore, the Director will consider prior-year allocations, percentage of total United States population, and the factors set out in §302.5(e) (1), (2), (4), and (5) in determining their allocations. The remaining balance of the reserve fund will then be used to restore any State which would receive less by formula share than its formula share for the previous fiscal year, provided that the reserve balance is sufficient to do this for all such States. Any remaining balance after this has been done will constitute a supplemental fund from which the Director will consider State requests for additional funding and the needs of any interstate civil defense authorities.

(c) For initial planning purposes only, each State will then be informed of the figure by the Regional Director. The State will base its initial EMA application upon that figure but may request a smaller amount or with appropriate justification a larger amount.

(d) The amount requested by the State shall not exceed 50 percent of its estimate of necessary and essential

State and local personnel and administrative expenses for the fiscal year.

(e) The formula distribution shall be reviewed and evaluated, and adjusted as appropriate, by the Director, based on the current situation in each State, the requests of all States, and recommendations by the Regional Directors. The Director will consider the following five factors:

(1) The ability of the State and its subgrantees to effectively expend such an amount for necessary and essential civil defense personnel and administrative purposes. Past performance is a factor in this determination.

(2) Special circumstances existing in the State at the time of allocating which require unusual expenditures for civil defense.

(3) Conditions peculiar to the State which make strict application of mathematical formula inequitable either to that State or other States.

(4) The relative cost of civil defense personnel and administrative services in that State; that is, whether such costs are considerably above or below the national average for similar services and expenses.

(5) Substantial changes in the civil defense readiness of the State not reflected by its recent civil defense expenditures.

(f) In September of each year, based on applications received and recommendations by the Regional Directors, the Director will make a tentative allocation to the States. This will include adjustments for States that have indicated they will not be using the total of the formula distribution amount. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) A State may provide to the Regional Director a preliminary annual submission in an amount not to exceed its tentative allocation.

(h) By September 30 (or as soon thereafter as feasible), the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds. This allocation for each State may include any additional amounts from the reserve portion of the EMA funds, and

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shall be in accordance with the regulations in this part and CPG 1-3.

(i) Upon the appropriation becoming available, and if requested by a State, the Regional Director may approve such State's preliminary annual submission (if found to meet all requirements in this part and CPG 1-3) in an appropriate amount which does not exceed the amount of the State's share of the Director's formal allocation of the Federal appropriation. An award document obligating Federal funds on the basis of the approved preliminary annual submission may be executed in accordance with the provisions of CPG 1-3.

(j) Based on and within 60 days after notification of its formal allocation, each State must provide to the Regional Director a final annual submission which meets all requirements in this part and CPG 1-3. If no changes are necessary, a State and the Regional Director may adopt in writing the State's preliminary annual submission as its final annual submission. If no award document was executed based on a State's preliminary annual submission, such document will be executed on the basis of that State's approved final annual submission.

(k) With regard to any State whose award document was executed pursuant to a preliminary annual submission covering only part of its formal allocation, upon approval (by the Regional Director) of the final annual submission (including a revised statement of work supporting the additional funding request) the Regional Director shall execute an amended award document obligating the balance of such State's formal allocation.

(l) After being advised of its annual formal allocation, if a State fails to submit, within 60 days, an approvable annual submission in the amount of its allocation, the Regional Director may reallocate the unused portion to other States in the region in such amounts as in his/her judgment will best assure adequate development of the civil defense capability of the Nation. The exception to this authority is in the event a State, or local jurisdiction, refuses to participate in attack preparedness activities. EMA funds withheld or returned for that reason are to be re-

leased to headquarters for reallocation on a national basis. In addition, the Regional Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

(m) Immediate notice to the headquarters EMA Program Manager of State reallocations is required in the form of copies of EMA-approved Annual Submission amendment documents, accompanied by copies of assistance award/amendment documents signed by regional and State authorized officials of both the releasing and recipient States.

(n) There is no dollar ceiling on the amount of funds that may be reallocated among States in a region. However, at any time that there are funds surplus to the eligible needs of the States within a region, those funds should be promptly released to headquarters for reallocation to other States with unfunded additional requirements.

(o) On July 1 of each fiscal year, the authority to reallocate EMA funds shall revert to the Director. In addition, any excess EMA funds available on that date, or that become available during the remainder of the fiscal year, are to be promptly released to headquarters for reallocation by the Director.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12521, Apr. 11, 1986; 51 FR 43924, Dec. 5, 1986; 56 FR 29905, July 1, 1991]

### § 302.6 Fiscal year limitation.

Federal appropriations for the program covered by the regulations in this part are limited for obligation on a Federal fiscal year basis. Each annual submission (or amendment thereto) which results in a change in scope (e.g., an increase in the amount of funds other than a cost overrun) must be approved during the Federal Fiscal year for which the funds to be charged were appropriated. Valid expenses incurred by a State or its subgrantee during the fiscal year but before obligation by FEMA of funds under this program may qualify for payment of a Federal financial contribution out of the funds

## § 302.7

subsequently appropriated for that fiscal year.

### § 302.7 Use of funds, materials, supplies, equipment, and personnel.

Financial contributions provided under the authority of section 205 of the Act are provided for necessary and essential State and local civil defense personnel and administrative expenses as prescribed by the regulations in this part and the provisions of CPG 1-3, and are obligated only on the basis of documentation justifying such need.

(a) *Emergencies.* In addition to such civil defense use, Federal funds obligated under a grantee's approved annual submission may be used, to the extent and under such terms and conditions as prescribed by the Director in CPG 1-3, for providing emergency assistance, including the use of civil defense personnel, organizational equipment, materials, and facilities, in preparation for and response to actual attack-related events or natural disasters (including manmade catastrophes).

(b) *Limitations.* Section 207 of the Act allows use of funds under the Act, including those for this program, for natural (including manmade) disaster preparedness and response purposes only to the extent that such use is consistent with, contributes to, and does not detract from attack-related preparedness (reference 44 CFR part 312).

### § 302.8 Waiver of "single" State agency requirements.

Section 205 of the Act requires that plans for civil defense of the United States be administered or supervised by a single State agency (50 U.S.C. App. 2286). Notwithstanding such law, section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214) provides authority for the Director as head of the grantor agency, upon the State's request, to waive the single State agency requirement and to approve other State administrative structure or arrangements, upon adequate showing that the requirement prevents the establishment of the most effective and efficient organizational arrangements within the State government. First, however, the Director must have found that the objectives of the Act (50

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U.S.C. app. 2251 *et seq.*) will not be endangered by the use of such other State structure or arrangements. Attachment D of OMB Circular A-102 requires that such requests be given expeditious handling by the grantor agency and that, whenever possible, an affirmative response be made.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12521, Apr. 11, 1986]

## PART 303 [RESERVED]

## PART 304—CONSOLIDATED GRANTS TO INSULAR AREAS

Sec.

304.1 Purpose.

304.2 Definitions.

304.3 Conditions for a consolidated grant.

304.4 Allocations.

304.5 Audits and records.

AUTHORITY: 50 U.S.C. app. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 43 FR 39776, Sept. 7, 1978, unless otherwise noted. Redesignated at 44 FR 56173, Sept. 28, 1979.

### § 304.1 Purpose.

The purpose of the regulations in this part is to prescribe the basis under which the Federal Emergency Management Agency (FEMA) contributes Federal funds to an insular area through a consolidated grant.

### § 304.2 Definitions.

Except as otherwise stated when used in the regulations of this part, the meaning of the listed terms are as follows:

(a) *Insular areas.* The Virgin Islands, Guam, American Samoa, and the Government of the Northern Mariana Islands.

(b) *Consolidated grant.* A grant by FEMA to any insular area through an allocation which combines funds for the State and local management program and the State and local maintenance and services program for a single Federal fiscal year.

(c) *FEMA guidance material.* FEMA regulations (44 CFR chapter I), Civil Preparedness Guide (CPG) 1-3, and Civil Preparedness Circulars (CPC) as

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presently providing or hereafter amended or revised.

[43 FR 39776, Sept. 7, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, as amended at 48 FR 44554, Sept. 29, 1983]

### § 304.3 Conditions for a consolidated grant.

(a) In order to participate, an insular area must submit a (one-time) administrative plan as provided for in FEMA guidance material (to be maintained in current status) and must sign a (one-time) civil rights assurance and a (one-time) grant agreement agreeing to comply with Federal requirements.

(b) An insular area need not submit an application for a consolidated grant, but must submit an annual program paper which meets the requirements prescribed in FEMA guidance material.

(c) Funds made available under a consolidated grant must be expended for State and local management program expenses and/or State and local maintenance and services program expenses as defined and described in FEMA guidance material. Each participating insular area will determine the proportion in which funds granted to it will be allocated between the two programs.

(d) Participating insular areas need not provide matching funds for consolidated grants.

[43 FR 39776, Sept. 7, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, as amended at 50 FR 40007, Oct. 1, 1985]

### § 304.4 Allocations.

For each Federal fiscal year concerned, the Director, FEMA, shall allocate to each participating insular area an amount not less than the sum of grants for the two programs which the Director, FEMA, has determined such insular area would otherwise be entitled to receive for such fiscal year.

### § 304.5 Audits and records.

(a) *Audits.* FEMA will maintain adequate auditing, accounting and review procedures as outlined in FEMA guidance material and OMB Circulars No. A-73 and A-102.

(b) *Records.* Financial records, supporting documents, statistical records, and all other records pertinent to a consolidated grant shall be retained for

a period of three years from submission of final billing and shall be available to the Director, FEMA, and the Comptroller General of the United States, all as prescribed in FEMA guidance material and in accordance with OMB Circular A-102 (42 FR 45828-45891).

## PARTS 305-311 [RESERVED]

## PART 312—USE OF CIVIL DEFENSE PERSONNEL, MATERIALS, AND FACILITIES FOR NATURAL DISASTER PURPOSES

Sec.

312.1 Purpose.

312.2 Definitions.

312.3 Policy.

312.4 General.

312.5 Personnel.

312.6 Materials and facilities.

AUTHORITY: Sec. 803(a)(3) Pub. L. 97-86; sec. 401, Federal Civil Defense Act of 1950, as amended, 50 U.S.C. app. 2253; Reorganization Plan No. 3 of 1978; 3 CFR, 1978 Comp., p. 329; and E.O. 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 47 FR 43381, Oct. 1, 1982, unless otherwise noted.

### § 312.1 Purpose.

The purpose of the regulations in this part is to prescribe the terms and conditions under which civil defense personnel, materials, and facilities, supported in whole or in part through contributions under the Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2251, *et seq.*, hereinafter referred to as "the Act", may be used for natural disasters, to the extent that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.

### § 312.2 Definitions.

Except as otherwise stated, when used in the regulations in this part, the meaning of the listed terms are as follows:

(a) The term *attack* means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by use of bombs, shellfire, or

atomic-radiological, chemical, bacteriological, or biological means or other weapons or processes;

(b) The term *natural disaster* means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons and, for the purposes of the Act, any explosion, civil disturbance, or any other manmade catastrophe shall be deemed to be a natural disaster;

(c) The term *civil defense* means all those activities and measures designed or undertaken (1) to minimize the effects upon the civilian population caused, or which would be caused, by an attack upon the United States, or by natural disaster, (2) to deal with the immediate emergency conditions which would be created by any such attack, or natural disaster, and (3) to effectuate emergency repairs to, or the emergency restoration of vital utilities and facilities destroyed or damaged by any such attack or natural disaster. Such term shall include, but shall not be limited to, (i) measures to be taken in preparation for anticipated attack or natural disaster (including the establishment of appropriate organizations, operational plans, and supporting agreements; the recruitment and training of personnel; the conduct of research; the procurement and stockpiling of necessary materials and supplies; the provision of suitable warning systems; the construction or preparation of shelter areas, and control centers; and, when appropriate, the non-military evacuation of civil population); (ii) measures to be taken during attack or natural disaster (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities; the evacuation of personnel to shelter areas; the control of traffic and panic; and the control and use of lighting and civil communications); and (iii) measures to be taken following attack or natural disaster (including activities for firefighting; rescue, emergency medical, health and sanitation serv-

ices; monitoring for specific hazards of special weapons; unexploded bomb reconnaissance; essential debris clearance; emergency welfare measures; and immediately essential emergency repair or restoration of damaged vital facilities);

(d) The word *materials* shall include raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for civil defense;

(e) The word *facilities*, except as otherwise provided herein, shall include buildings, shelters, utilities, and land;

(f) The term *United States* or *States* shall include the several States, the District of Columbia, the Territories, and the possessions of the United States;

(g) The term *political subdivisions* shall include local governments, including but not limited to cities, towns, incorporated communities, counties, parishes, and townships; and

(h) The term *CPG 1–3* refers to FEMA's "Federal Assistance Handbook" promulgated as Civil Preparedness Guide (CPG) 1–3, as amended, by numbered changes thereto and by Civil Preparedness Circulars (CPC). CPG 1–3 sets forth detailed guidance on procedures which a State and, where applicable, its political subdivisions must follow in order to request financial assistance from FEMA. It also sets forth detailed requirements, terms, and conditions upon which financial assistance is granted.

(Reorganization Plan No. 3 of 1978, E.O. 12127 and E.O. 12148)

[47 FR 43381, Oct. 1, 1982, as amended at 48 FR 44545, Sept. 29, 1983]

### § 312.3 Policy.

(a) It is the policy of FEMA to provide a means of assistance to States and their political subdivisions in their carrying out responsibilities to alleviate the suffering and damage from attack-related or natural disasters by:

(1) Providing contributions for personnel, equipment, materials and facilities that may be used in preparing for or responding to disasters, provided that the use of such funds for natural disasters is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.

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(2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the State and its political subdivisions.

(3) Assisting in achieving greater coordination of disaster preparation and response programs.

(4) Providing technical advice and guidance to States and their political subdivisions for organizing and preparing to meet the effects of disasters.

(b) These regulations are not to be interpreted as authorizing States and their political subdivisions to request or receive additional assistance relating to particular disaster incidents.

### §312.4 General.

(a) The Director, FEMA, will provide statements to States and their political subdivisions concerning Agency mission and goals, Annual Program Emphasis, and other directions, instructions, and technical guidance which together specify preparedness and response activities for both attack-related and natural disasters.

(b) States and their political subdivisions may apply to FEMA for financial assistance under the Act in a manner prescribed by Federal Regulations governing grants and cooperative agreements. Such applications must be compatible with FEMA's goals and requirements described in paragraph (a) of this section.

(c) Financial contributions to States and their political subdivisions are made by FEMA based on approval of the activities and projects described in the Annual Program Paper, and/or Comprehensive Cooperative Agreement, and which are in conformance with provisions of CPG 1-3, and applicable FEMA regulations set forth in chapter 1 of this title 44, chapter 1, subchapter E, of the Code of Federal Regulations. Financial contributions will not be made unless substantive activities and projects in preparation for and response to attack-related disasters are identified, and progress is indicated in the submissions, and recorded in program reporting systems. The presence of unavoidable circumstances, and the good faith effort of the applicant, will be considered if certain objectives are not met.

(d) State and local officials may use personnel, equipment, and facilities for natural disasters outside the physical boundaries of the jurisdiction and under the conditions stated within this regulation.

(e) Specific criteria relating to the preparedness and response activities are given in §§312.5 and 312.6 of this part.

### §312.5 Personnel.

FEMA contributes to the development and support of emergency management organizations in the States and their political subdivisions, and to the development, operation, and maintenance of specific programs, through payment of salaries and benefits of State and local civil defense staff, and the payment of administrative expenses and travel, not to exceed 50 percent. FEMA also provides contributions for training and education expenses. The following use of such personnel for natural disaster purposes is allowable provided that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness:

(a) In developing, maintaining, testing and exercising plans, systems, and procedures for the protection of people and property from the effects of attack-related disasters, States and their political subdivisions may include and provide for natural disasters.

(b) Personnel supported in part through contributions under the Act may be assigned responsibilities for preparation for and response to natural disasters in any specific emergency occurring in a State or its political subdivisions as determined by the responsible State or local officials, respectively.

(c) Personnel supported in whole under the Act, may be assigned to emergency response operations for 15 days at the discretion of State officials; approval of the FEMA Regional Director is required for the use of these personnel in excess of 15 days. An assignment to emergency response operations does not preclude the accomplishment of program work and objectives. Failure to accomplish such work may subject the State to the withholding of funds contributed under the

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Act, or to collection of funds already obligated, not to exceed the estimated cost of the work not performed, as determined by the Regional Director.

(d) In the event of an emergency or major disaster declared under the Disaster Relief Act of 1974, as amended, personnel will not be provided overtime compensation and expenses under the Act.

## § 312.6 Materials and facilities.

FEMA also contributes to the development and support of emergency management in the States and their political subdivisions, and to the development, operation, and maintenance of specific programs, through providing certain materials and facilities. The following may be used for natural disaster purposes provided that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness:

(a) Materials provided and maintained through contributions under the Act.

(b) Technical information, guidance through which technical assistance is provided, and training courses, may contain examples, illustrations, discussion, suggested applications and uses of material.

(c) Equipment loaned under provisions of the Contributions Project Loan Program.

(d) Facilities, such as Emergency Operating Centers, provided and maintained through contributions under the Act.

(e) Equipment loaned or granted to the States for civil defense purposes (e.g., radiological instruments, shelter supplies).

## PARTS 313–320 [RESERVED]

## PART 321—MAINTENANCE OF THE MOBILIZATION BASE (DEPARTMENT OF DEFENSE, DEPARTMENT OF ENERGY, MARITIME ADMINISTRATION)

Sec.

321.1 General.

321.2 Selection of the mobilization base.

321.3 Maintaining the mobilization base.

321.4 Achieving production readiness.

321.5 Retention of industrial facilities.

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321.6 Participation of small business.

321.7 [Reserved]

321.8 Reports.

AUTHORITY: National Security Act of 1947, as amended 50 U.S.C. 404; Defense Production Act of 1950, as amended; 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 (44 FR 43239).

SOURCE: 45 FR 44576, July 1, 1980, unless otherwise noted.

### § 321.1 General.

A sustained state of mobilization production readiness is necessary to place the United States in a defense posture which will enable the nation to defend itself against aggression in peripheral conflicts or general war involving nuclear attacks on this country. Therefore, the facilities, machine tools, production equipment, and skilled workers necessary to produce the wartime requirements of the Department of Defense, Department of Energy, and the Maritime Administration shall be maintained in a state of readiness which will facilitate their immediate use or conversion in time of emergency, with especial emphasis on measures to maximize the probability of continued post-attack production of those items judged to be vital to survival and victory.

### § 321.2 Selection of the mobilization base.

(a) The Department of Defense shall select, for its mobilization base, facilities which produce or are capable of producing critically important military items or components (military class A components used entirely in the production, maintenance, or repair of military items) which meet one of the following:

(1) Those items which would be so urgent to the defense of this country that utmost effort must be exerted to produce them even in case of general war involving severe damage to the facilities necessary to produce these items and the components thereof.

(2) Those items essential to survival and retaliation, maintenance of health, or combat efficiency required to support peripheral war and which meet one or more of the following criteria:

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(i) Items requiring a long lead-time or long manufacturing cycle.

(ii) Items currently not in production or which are required in quantities far in excess of peacetime production.

(iii) Items requiring the conversion of an industry or a number of plants within an industry.

(iv) Items requiring materials or manufacturing processes essentially different from those in current use.

(v) Items for which industry does not have production experience.

Paragraph (a)(2) of this section is inclusive of the Department of Defense Preferential Planning List of End Items.

(b) In selecting facilities for the Department of Defense mobilization base, consideration shall be given to their vulnerability to nuclear attack, with particular attention to the possibility of (1) minimizing vulnerability of facilities producing “urgent” items under paragraph (a)(1) of this section, including the need for dispersal, protective construction, and special security measures to safeguard against sabotage of clandestine attack, and (2) reducing concentration of uncommon critical production facilities so that a productive segment of each critical industry would be likely to survive a nuclear attack.

(c) The Department of Energy and the Maritime Administration, in cooperation with the Federal Emergency Management Agency, shall determine the items and facilities which meet the above criteria for their respective programs for maintaining the mobilization base.

### § 321.3 Maintaining the mobilization base.

(a) Facilities selected to produce “urgent” items shall be maintained within limits of existing procurement authority and funds available by the Department of Defense, the Department of Energy, and the Maritime Administration in the following manners to the maximum practical degree:

(1) Current procurement shall be placed in these facilities to the extent which will maintain them in a state of readiness compatible with the plans of the procuring agency.

(2) Machine tools and production equipment will be installed in these facilities to the extent found necessary by the procuring agency.

(3) Develop and maintain plans for alternate production capacity in case disaster destroys current facilities, such capacity to be located to the maximum extent possible away from highly concentrated industrial areas and major military installations.

(b) Other facilities selected as part of the mobilization base, shall be maintained to the fullest extent possible.

(1) Procurement agencies shall integrate current procurement with their industrial mobilization plans to the greatest possible extent with the objective of supporting the mobilization base within authorities and funds available.

(2) Data assembled on essential mobilization suppliers by the industrial mobilization planning of these agencies shall be used in planning current procurement. The policy of using contractors and facilities essential to the mobilization base is considered to be in the best interest of the Government.

(3) Planned producers that are deemed to be a part of the mobilization base will be invited to participate in appropriate current procurement.

(4) Upon expiration of current procurement contracts in a facility, the procuring agency shall take such of the following actions as are compatible with its plans for maintaining a state of readiness:

(i) *Government-owned facilities and tools.* Within the limitations that may be imposed by Congressional appropriations, place government-owned facilities and tools in standby status and establish provisions for their adequate maintenance. This does not preclude the use of government-owned production equipment, on a loan basis, to enable the military departments to meet current production schedules, as provided in DMO-VII-4, Amendment 1.

(ii) *Privately-owned facilities and government-owned tools.* (A) Arrange with management of privately-owned facilities, wherever possible, to place government-owned tools and production equipment in the status provided by DMO-VII-4, as amended, taking into



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account the desirability of safe location.

(B) Arrange with management, on a voluntary basis, to keep a group of key managers, engineers, and skilled workers familiar with the items planned for mobilization production.

(C) Determine the gaps which exist in government-owned packages of tools and production equipment needed to produce mobilization requirements in privately-owned plants. Within the limit of fund availability, plan the procurement of such tools and equipment with priority being given to long lead-time tools and equipment or those not used in general manufacturing. These tools and equipment, when procured, should be placed in the status provided by DMO-VII-4, as amended, taking into account the desirability of safe locations.

(D) Determine which government-owned tools and equipment have become obsolete, or which would not be used in event of mobilization, and plan for their disposal in accordance with the provisions of DMO-VII-4, as amended.

#### **§ 321.4 Achieving production readiness.**

(a) In order to achieve a capability for maximum production of "urgent" items during the initial phase of war, the following readiness measures shall be taken where advisable for facilities producing such items:

(1) Establishment of emergency production schedules.

(2) Development of a production capability which would function under widespread disruption and damage imposed by enemy attack, including, where necessary:

(i) Maintenance of an increased inventory of finished components and related production supplies at assembly plants, or arrangements for alternative supply lines where increased inventories are not feasible.

(ii) A capability to carry on urgent production without dependence on additional personnel, external sources of power, fuel, and water, or on long-distance communications; with spare replacements for highly vulnerable or unreliable parts of production equipment.

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(iii) Protection of production facilities from enemy sabotage through adequate physical security measures.

(iv) Protection of personnel from widespread radiological fallout through provisions for decontamination and shelter.

#### **§ 321.5 Retention of industrial facilities.**

(a) Industrial properties, owned by the Department of Defense, the Department of Energy, and the Maritime Administration, shall be retained in the Industrial reserves (National Industrial Reserve, Departmental Industrial Reserve for the Department of Defense) of the department and agencies to the extent the capacity of said reserves is necessary for the production of defense or defense-supporting end items, materials or components in a mobilization period.

(b) Each idle plant in the reserves shall be reviewed annually by the heads of the respective agencies to determine if the capacity of the plant continues necessary for mobilization purposes.

(c) Upon the determination by the head of the agency that the capacity of a plant is excess to the mobilization requirements of the agency immediate steps will be taken to dispose of the plant through existing government channels for surplus disposal. The Federal Emergency Management Agency shall be informed by General Services Administration of each proposed surplus action prior to final determination.

#### **§ 321.6 Participation of small business.**

The agencies concerned with the order shall, in all of their programs for maintaining the mobilization base, be mindful of the national policy to protect the interests of small business, and to assure the maximum participation of small business in the mobilization base, including current procurement.

#### **§ 321.7 [Reserved]**

#### **§ 321.8 Reports.**

The Department of Defense, Department of Energy, and Maritime Administration shall furnish the Director of

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the Federal Emergency Management Agency with reports on items and facilities for programs under § 321.2 (a) and (b) of this part, and with such other periodic and special reports as he may require affecting the maintenance of the mobilization base.

### **PART 323—GUIDANCE ON PRIORITY USE OF RESOURCES IN IMMEDIATE POST ATTACK PERIOD (DMO-4)**

Sec.

323.1 Purpose.

323.2 General policy.

323.3 Responsibilities.

323.4 Priority activities in immediate post-attack period.

323.5 Assignment of resources.

#### **APPENDIX 1 TO PART 323—LIST OF ESSENTIAL SURVIVAL ITEMS**

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 45 FR 44579, July 1, 1980, unless otherwise noted.

#### **§ 323.1 Purpose.**

This part:

(a) States the policy of the Federal Government on use of resources in the period immediately following a nuclear attack on the United States;

(b) Provides general guidance for Federal, State, and local government officials on activities to be accorded priority in the use of postattack resources; and

(c) Lists those items essential to national survival in the immediate postattack period.

#### **§ 323.2 General policy.**

(a) In an immediate postattack period all decisions regarding the use of resources will be directed to the objective of national survival and recovery. In order to achieve this objective, postattack resources will be assigned to activities concerned with the maintenance and saving of lives, immediate military defense and retaliatory operations, economic activities essential to continued survival and recovery.

(b) This guidance is designed to achieve a degree of national equity in the use of resources and to assign and conserve resources effectively in the immediate postattack period. Until more specific instructions are available, these are the general guidelines within which managerial judgment and common sense must be used to achieve national objectives under widely differing emergency conditions.

#### **§ 323.3 Responsibilities.**

(a) As stated in The National Plan for Emergency Preparedness, the direction of resources mobilization is a Federal responsibility. However, in the period immediately following an attack, certain geographical areas may be temporarily isolated, and State and local governments will assume responsibility for the use of resources remaining in such areas until effective Federal authority can be restored. State and local governments will not assume responsibility for resources under the jurisdiction of a Federal agency where the Federal agency is able to function.

(b) As soon as possible after an attack and until specific national direction and guidance on the use of resources is provided, Federal, State, and local officials will determine what resources are available, to what needs they can be applied, how they are to be used, and the extent to which resources are deficient or in excess of survival needs. They will base determinations as to the relative urgency for use of resources primarily upon the importance of specific needs of defense, survival, and recovery.

#### **§ 323.4 Priority activities in immediate postattack period.**

The following activities are to be accorded priority over all other claims for resources. There is no significance in the order of the listing—all are important. The order in which and the extent to which they are supported locally may vary with local conditions and circumstances. If local conditions necessitate the establishment of an order of priority among these activities, that order shall be based on determinations of relative urgency among the activities listed, the availability of

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resources for achieving the actions required, and the feasibility and timeliness of the activities in making the most rapid and effective contribution to national survival.

(a) The immediate defense and retaliatory combat operations of the Armed Forces of the United States and its Allies: This includes support of military personnel and the production and distribution of military and atomic weapons, materials and equipment required to carry out these immediate defense and retaliatory combat operations.

(b) Maintenance or reestablishment of Government authority and control to restore and preserve order and to assure direction of emergency operations essential for the safety and protection of the people. This includes:

- (1) Police protection and movement direction;
- (2) Fire defense, rescue and debris clearance;
- (3) Warnings;
- (4) Emergency information and instructions;
- (5) Radiological detection, monitoring and decontamination.

(c) Production and distribution of survival items and provision of services essential to continued survival and rapid recovery. (For list of survival items, see appendix 1 to this part.) These include:

- (1) Expedient shelter;
  - (2) Food, including necessary processing and storage;
  - (3) Feeding, clothing, lodging, and other welfare services;
  - (4) Emergency housing and community services;
  - (5) Emergency health services, including medical care, public health and sanitation;
  - (6) Water, fuel, and power supply;
  - (7) Emergency repair and restoration of damaged vital facilities.
- (d) Essential communications and transportation services needed to carry out the above activities.
- (e) Provision of supplies, equipment, and repair parts to produce and distribute goods needed for the above activities.

### § 323.5 Assignment of resources.

Resources required for essential uses, including manpower, will be assigned

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to meet the emergency requirements of the priority activities indicated above. The principal objectives are to use available resources to serve essential needs promptly and effectively, and to:

(a) Protect and to prevent waste or dissipation of resources prior to their assignment to priority activities;

(b) Support production of essential goods. Other production will be permitted to continue only from inventories on hand and when there is no emergency requirement for the resources vital to this production.

(c) Support construction for emergency repair and restoration, construction of facilities needed for survival, or the conversion of facilities to survival use, where this can be accomplished quickly. Other construction already under way should be stopped, and no new construction started unless it can be used immediately for essential purposes upon completion.

### APPENDIX 1 TO PART 323—LIST OF ESSENTIAL SURVIVAL ITEMS

This document contains a list of items considered essential to sustain life at a productive level to assure national survival in an emergency. The list identifies items to which major attention should be given in all phases of preattack planning to insure the availability of basic essentials for a productive economy in the event of a nuclear attack. Supply-requirements studies and assessments for these items will be made to disclose critical deficiencies or other problems that can be anticipated. Revisions will be made as necessary to keep the items as up-to-date as possible.

The items are arranged by seven major groups:

- (1) Health Supplies and Equipment,
- (2) Food,
- (3) Body Protection and Household Operations,
- (4) Electric Power and Fuels,
- (5) Sanitation and Water Supply,
- (6) Emergency Housing and Construction Materials and Equipment, and
- (7) General Use Items.

Survival items are defined as “those items without which large segments of the population would die or have their health so seriously impaired as to render them both burdensome and non-productive.” The items have been classified into Group A or Group B, with Group A representing end products consumed or used directly by the population,

and Group B consisting of those items essential to the effective production and utilization of the Group A items, which are consumed or used directly by the people.

There are no Group B items in the categories of Health Supplies and Equipment, Body Production and Household Operations, and Emergency Housing and Construction Materials and Equipment. All of these items are considered to be consumed directly and any attempt to separate them in to A and B groupings would be too arbitrary to be meaningful.

It is important to keep in mind the fact that while the items listed are the basic essentials necessary for maintaining a viable economy during the first six months following an attack, not all of them would create problems that would require government action preattack to insure adequate supplies. The aforementioned supply-requirements studies will be undertaken to identify the problem areas. In developing supply data, all available production capacity, existing inventories, and possible substitutions will be considered. For example, in analyzing clothing items, all available supplies would be considered from sport to dress shirts, from overalls to dress suits. However, new production would be limited to the simplest form of the basic item which can be produced. The final determination as to which of the items are most critical and which may require preattack actions by the Government, as well as the type of actions which must be taken, can be made only after a comprehensive supply-requirements analysis is completed.

#### LIST OF ESSENTIAL SURVIVAL ITEMS

##### I. HEALTH SUPPLIES AND EQUIPMENT

###### Group A

###### 1. *Pharmaceuticals:*

Alcohol.  
Analgesics, non-narcotic.  
Antibiotics and antibacterials.  
Antidiabetic agents, oral.  
Antihistamines.  
Antimalarials.  
Atropine.  
Blood derivatives.  
Carbon dioxide absorbent.  
Cardiovascular depressants.  
Cardiovascular stimulants.  
Corticosteriods.  
Diuretics.  
General anesthetics.  
Hypnotics.  
Insulin.  
Intravenous solutions for replacement therapy.  
Local anesthetics.  
Lubricant, surgical.  
Morphine and substitutes.  
Oral electrolytes.

Oxygen.  
Surgical antiseptics.  
Sulfa drugs.  
Synthetic plasma volume expanders.  
Vitamin preparations, pediatric.  
Water for injection.

###### 2. *Blood Collecting and Dispensing Supplies:*

Blood collecting and dispensing containers.  
Blood donor sets.  
Blood grouping and typing sera.  
Blood recipient sets.  
Blood shipping containers.

###### 3. *Biologicals:*

Diphtheria toxoid.  
Diphtheria antitoxin.  
Diphtheria and tetanus toxoids and pertussis vaccine.  
Gas gangrene antitoxin.  
Poliomyelitis vaccine, oral.  
Rabies vaccine.  
Smallpox vaccine.  
Tetanus antitoxin.  
Tetanus toxoid, absorbed.  
Typhoid vaccine.  
Typhus vaccine, epidemic.  
Yellow fever vaccine.

###### 4. *Surgical Textiles:*

Adhesive plaster.  
Bandage, gauze.  
Bandage, muslin.  
Bandage, plaster of paris.  
Cotton, USP.  
Surgical pads.  
Stockinette, surgical.  
Wadding, cotton sheet.

###### 5. *Emergency Surgical Instruments and Supplies:*

Airway, pharyngeal.  
Anesthesia apparatus.  
Basin, wash, solution.  
Blade, surgical knife.  
Brush, scrub, surgical.  
Catheter, urethral.  
Containers for sterilization.  
Chisel, bone.  
Drain, Penrose.  
Dusting powder.  
Forceps, dressing.  
Forceps, hemostatic.  
Forceps, obstetrical.  
Forceps, tissue.  
Gloves, surgeon's.  
Handles, surgical knife.  
Holder, suture needle.  
Inhaler, anesthesia, Yankauer (ether mask).  
Intravenous injection sets.  
Knife, cast cutting.  
Lamps, for diagnostic instruments.  
Lamps, for surgical lights.  
Laryngoscope.  
Light, surgical, portable.  
Litter.  
Mallet, bone surgery.  
Needles, hypodermic, reusable.  
Needles, suture, eyed.  
Otoscope and ophthalmoscope set.

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Probe, general operating.  
 Razor and blades (for surgical preparation).  
 Retractor, rib.  
 Retractor set, general operating.  
 Rongeur, bone.  
 Saw, amputating.  
 Saw, bone cutting, wire (Gigli).  
 Scissors, bandage.  
 Scissors, general surgical.  
 Sigmoidoscope.  
 Speculum, vaginal.  
 Sphygmomanometer.  
 Splint, leg, Thomas.  
 Splint, wire, ladder.  
 Sterilizer, pressure, portable.  
 Stethoscope.  
 Sutures, absorbable.  
 Sutures, absorbable, with attached needle.  
 Sutures, nonabsorbable.  
 Sutures, nonabsorbable, with attached needle.  
 Syringes, Luer, reusable (hypodermic syringes).  
 Thermometers, clinical.  
 Tracheotomy tube.  
 Tube, nasogastric.  
 Tubing, rubber or plastic, and connectors.  
 Vascular prostheses.  
 Webbing, textile, with buckle.

6. *Laboratory Equipment and Supplies:*  
 Bacteriological culture media and apparatus.  
 Balance, laboratory with weights.  
 Blood and urine analysis instruments, equipment and supplies.  
 Chemical reagents, stains and apparatus.  
 Glassware cleaning equipment.  
 Laboratory glassware.  
 Microscope and slides.  
 Water purification apparatus.

Group B

None.

**II. FOOD**

**Group A**

1. *Milk group.* Milk in all forms, milk products. Important for calcium, riboflavin, protein, and other nutrients.

2. *Meat and meat alternate group.* Meat, poultry, fish, eggs; also dry beans, peas, nuts. Important for protein, iron, and B-vitamins.

3. *Vegetable-fruit group.* Including 1. Dark Green and yellow vegetables. Important for Vitamin A. 2. Citrus fruit or other fruit or vegetables. Important for Vitamin C. 3. Other fruits and vegetables, including potatoes.

4. *Grain products.* Especially enriched, re-stored, cereal and cereal products, and bread, flours, and meals. Important for energy, protein, iron, and B-vitamins.

5. *Fats and oils.* Including butter, margarine, lard, and other shortening oils. Important for palatability and food energy; some for Vitamin A and essential fatty acids.

6. *Sugars and syrups.* Important for palatability and food energy.

7. *Food adjuncts.* Certain food adjuncts should be provided to make effective use of available foods. These include antioxidants and other food preservatives, yeast, baking powder, salt, soda, seasonings and other condiments. In addition, coffee, tea, and cocoa are important for morale support.

**Group B**

Food containers.  
 Nitrogenous fertilizers.  
 Seed and livestock feed.  
 Salt for livestock.  
*Veterinary Medical Items:*  
 Anthrax vaccine.  
 Black leg vaccine.  
 Hog cholera vaccine.  
 Newcastle vaccine.

**III. BODY PROTECTION AND HOUSEHOLD OPERATIONS**

**Group A**

1. *Clothing:*  
 Gloves and mittens.  
 Headwear.  
 Hosiery.  
 Outerwear.  
 Shoes and other footwear.  
 Underwear.  
 Waterproof outer garments.

2. *Personal Hygiene Items:*  
 Diapers, all types.  
 Disposable tissues.  
 First aid items (included on Health Supplies and Equipment List).  
 Nipples.  
 Nursing bottles, all types.  
 Pins.  
 Sanitary napkins.  
 Soaps, detergents, and disinfectants.  
 Toilet tissue.

3. *Household Equipment:*  
 Bedding.  
 Canned heat.  
 Cots.  
 Hand sewing equipment.  
 Heating and cooking stoves.  
 Incandescent hand portable lighting equipment (including flashlights, lamps, batteries).  
 Kitchen, cooking, and eating utensils.  
 Lamps (incandescent medium base) and lamp holders.  
 Matches.  
 Nonelectric lighting equipment.  
 Sleeping bags.

**Group B**

None.

**IV. ELECTRIC POWER AND FUELS**

1. *Electric Power.*

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Group A	V. SANITATION AND WATER SUPPLY
Electricity.	Group A
Group B	1. <i>Water.</i>
Conductors (copper and/or aluminum), including bare cable for high voltage lines and insulated wire or cable for lower voltage distribution circuits.	2. <i>Water Supply Materials:</i>
Switches and circuit breakers.	a. <i>Coagulation:</i>
Insulators.	Ferric chloride.
Pole line hardware.	Ferrous sulfate.
Poles and crossarms.	Ferric sulfate.
Transformers (distribution, transmission, and mobile).	Chlorinated copperas.
Tools for live-circuit operations, including rubber protective equipment, and linemen's tools.	Filter alum.
Utility repair trucks, fully equipped.	Hydrated lime.
Prime mover generator sets up to 501 kilowatts and 2400 volts, including portable and mobile sets up to 150 kilowatts and 110/220/440 volts, 3-phase, 60-cycle complete with fuel tank and switchgear in self-contained units.	Pulverized limestone.
2. <i>Petroleum Products.</i>	Soda ash.
Group A	b. <i>Disinfection Chemicals:</i>
Gasoline.	High-test hypochlorites (70 percent) in drums, cans, ampules.
Kerosene.	Iodine tablets.
Distillate fuel oil.	Liquid chlorine, including containers.
Residual fuel oil.	Chlorine compounds (not gas).
Liquefied petroleum oil.	c. <i>Miscellaneous Materials:</i>
Lubricating oil.	Diatomaceous earth.
Grease.	Activated carbon.
Group B	3. <i>Chemical Biological, and Radiological CBR Detection, Protection, and Decontamination Items:</i>
Storage tanks.	Calibrators.
Pumps for loading and unloading.	Chemical agent detection kits, air, food, and water.
Pressure containers and fittings for liquefied petroleum gas.	Dosimeters and chargers.
3. <i>Gas.</i>	Protective masks, clothing, helmets.
Group A	Survey meters (Alpha, Beta, Gamma).
Natural gas.	Warning signs—biological, chemical, and radiological contamination.
Manufactured gas.	4. <i>Insect and Rodent Control Items:</i>
Group B	a. <i>Insecticides:</i>
Various sizes of pipe (mostly steel).	DDT, water dispersible powder (75 percent).
Various sizes of valves, fittings, and pressure regulators.	Lindane powder, dusting (1 percent).
Specialized repair trucks and equipment.	Malathion, liquid, emulsifiable concentrate (57 percent).
4. <i>Solid Fuels.</i>	Deet (diethyltoluamide) 75 percent in denatured alcohol.
Group A	Pyrethrum.
Coal and coke.	b. <i>Rodenticides:</i>
Group B	Anticoagulant type, ready-mixed bait.
Conveyor belting.	“1080” (sodium monofluoroacetate) (for controlled use only).
Insulated trail cables.	5. <i>General Sanitation:</i>
Trolley feeder wire.	Lye.
Roof bolts.	Group B
	1. <i>General Supplies and Equipment:</i>
	Chemical feeders.
	Mobile and portable pressure filters.
	Chlorinators (gas and hypochlorites).
	Pumps and appurtenances, Hand—Electric—Gasoline—Diesel.
	Well-drilling equipment, including well casing, drive pipe and drive points.
	2. <i>Storage and Transport Equipment:</i>
	Lyster bags.
	Storage tanks, collapsible and portable.
	Storage tanks, rigid, transportable.
	Storage tanks, wood stave, knock-down.
	3. <i>Laboratory Equipment and Supplies:</i>

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Membrane filter kits with filters and media.  
Chlorine and pH determination equipment.

**4. Sanitation Equipment:**

Hand sprayer, continuous type.  
Hand sprayer, compression type.  
Hand duster, plunger type.  
Spraying equipment for use with helicopter, fixed-wing light aircraft, high-speed fixed-wing attack aircraft, and cargo-type aircraft.

**VI. EMERGENCY HOUSING AND CONSTRUCTION MATERIALS AND EQUIPMENT**

**Group A**

Asphalt and tar roofing and siding products.  
Builders hardware—hinges, locks, handles, etc.  
Building board, including insulating board, laminated fiberboard, hardpressed fiberboard, gypsum board, and asbestos cement (flat sheets and wallboard).  
Building papers.  
Plastic patching, couplings, clamps, etc. for emergency repairs.  
Plumbing fixtures and fittings.  
Prefabricated emergency housing.  
Rough hardware—nails, bolts, screws, etc.  
Sewer pipe and fittings.  
Tents and tarpaulins; canvas, plastics, and other similar materials.  
Lumber and allied products; Lumber, principally 1-inch and 2-inch, minor quantities of small and large timbers; siding and flooring; plywood; millwork, doors, and windows.  
Masonry products—brick, cement, lime, concrete block, hollow tile, etc.  
Translucent window coverings.  
Water pipe and hose, plus fittings—all types including fire hose.

**Group B**

None.

**VII. GENERAL USE ITEMS**

**Group A**

None.

**Group B**

Batteries, wet and dry cell.  
Bulldozers.  
Fire fighting equipment.  
Light equipment and hand tools (including electric powered) for carpentry, masonry, plumbing, and excavation.  
Pipe installation materials and equipment.  
Refrigerators, mechanical.  
Rigging tools—cables, ropes, tackles, hoists, etc.  
Tank railroad cars.  
Tank Trucks and trailers.  
Tires.  
Trenching equipment.

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Truck tractors and trailers, including low bed.

Trucks up to five tons (25 percent equipped with power takeoff).

Welding equipment and supplies (electric and acetylene).

**PARTS 324–325 [RESERVED]**

**PART 327—POLICY ON USE OF GOVERNMENT-OWNED INDUSTRIAL PLANT EQUIPMENT BY PRIVATE INDUSTRY (DMO-10A)**

**Sec.**

- 327.1 Purpose.
- 327.2 Scope and applicability.
- 327.3 Policy.
- 327.4 Disputes.
- 327.5 Reports.

**AUTHORITY:** National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239.

**SOURCE:** 45 FR 44583, July 1, 1980, unless otherwise noted.

**§ 327.1 Purpose.**

This part establishes policy on the use by private industry of Government-owned industrial plant equipment. This policy is necessary to maintain a highly effective and immediately available reserve of such equipment for the emergency preparedness programs of the U.S. Government.

**§ 327.2 Scope and applicability.**

(a) This part applies to all Federal departments and agencies having, for purposes of mobilization readiness, Government-owned industrial plant equipment under their jurisdiction or control and having emergency preparedness functions assigned by Executive orders concerning use of that equipment.

(b) As used herein, *industrial plant equipment* means those items of equipment, each with an acquisition cost of \$1,000 or more, that fall within specified classes of equipment listed in DOD regulations. Classes of equipment may from time to time be added to or deleted from this list.

**§ 327.3 Policy.**

(a) *General.* (1) Primary reliance for defense production shall be placed upon private industry.

(2) When it is determined by an agency that, because of the lack of specific industrial plant equipment, private industry of the United States cannot be relied upon for needed Government production, that agency may provide to private industry such Government-owned industrial plant equipment as is deemed necessary to ensure required production capability. Requirements for such equipment should be reviewed at least annually to ascertain the continuing need, particularly with a view toward private industry furnishing the equipment for long term requirements.

(3) When it is necessary for Federal agencies to supply Government-owned industrial plant equipment to private industry, these agencies will maintain uniformity and fairness in the arrangements for the use of this equipment by following regulations for the use of such equipment as developed and published by the Secretary of Defense pursuant to section 809 of Public Law 93-155. The regulations to be developed by the Secretary of Defense shall be in consonance with this order. These regulations will attempt to ensure that no Government contractor is afforded an advantage over his competitors and that Government-owned industrial plant equipment is maintained properly and kept immediately available for the emergency preparedness needs of the United States.

(b) *Interagency use of idle equipment.* In any instances in which a Government contractor cannot meet Government production schedules because necessary industrial plant equipment is not available from private industry or from the contracting Federal department or agency, idle industrial plant equipment under the control of other Federal agencies may be made available for this purpose through existing authorities on a transfer, loan, or replacement basis by interagency agreement.

(c) *Availability of equipment for emergency use.* Government-owned industrial plant equipment may be provided by controlling agencies for emergency use by essential Government contrac-

tors whose facilities have been damaged or destroyed.

(d) *Uniform rental rates.* All new agreements entered into by any agency of the Federal Government under which private business establishments are provided with Government-owned industrial plant equipment shall be subject to rental rates established by the Secretary of Defense pursuant to section 809 of Public Law 93-155. The rental rates shall ensure a fair and equitable return to the U.S. Government and be generally competitive with commercial rates for like equipment.

(e) *Use of Government-owned industrial plant equipment for commercial (non-Government) purposes.* Subject to adequate controls being established under DOD regulations pursuant to Public Law 93-155, and statutory authority for leasing, Government-owned industrial plant equipment may be authorized for commercial use by contractors performing contracts or subcontracts for the Government agency if it is necessary to keep the equipment in a high state of operational readiness through regular usage to support the emergency preparedness programs of the U.S. Government.

**§ 327.4 Disputes.**

In the event of an interagency dispute about the regulations developed by the Department of Defense in accordance with this order, the Director, Federal Emergency Management Agency, shall adjudicate.

**§ 327.5 Reports.**

Such reports of operations under this order as may be required by the Federal Emergency Management Agency, shall be submitted to the Director.

**PART 328 [RESERVED]****PART 329—USE OF PRIORITIES AND ALLOCATION AUTHORITY FOR FEDERAL SUPPLY CLASSIFICATION (FSC) COMMON USE ITEMS (DMO-12)**

Sec.	
329.1	Purpose.
329.2	Policies.
329.3	Procedures.
329.4	Implementation.



## § 329.1

AUTHORITY: Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239; E.O. 10480 of Aug. 14, 1953, (18 FR 4939) as amended.

SOURCE: 45 FR 44585, July 1, 1980, unless otherwise noted.

### § 329.1 Purpose.

This part provides policy guidance concerning the use of priorities and allocation authority under title I of the Defense Production Act of 1950, as amended, for the procurement of common use items in the Federal Supply Classification (FSC).

### § 329.2 Policies.

The following guidance is provided pursuant to the Defense Production Act of 1950, as amended; section 201 of Executive Order 10480, and § 322.2 of this chapter (DMO-3).

(a) Priority ratings under title I of the Defense Production Act of 1950, as amended, are not authorized for certain FSC Groups, Classes, and Items:

(1) Which are of the types commonly available in commercial markets for general consumption,

(2) Which do not require major modification when purchased for military or other ratable government use, and

(3) Which are in sufficient supply as to cause no hindrance to the accomplishment of military or other national defense objectives.

Such Groups, Classes, and Items will be as specified from time to time by the Department of Commerce with the approval of the Federal Emergency Management Agency. Procurement in these Groups, Classes, and Items is to be made without priority assistance, including single service procurement that may include defense and defense-supporting needs. In the event procurement difficulties are encountered which threaten timely delivery, application for special assistance may be made for those categories of supply authorized special assistance in existing lists, and must be accompanied by full

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justification to support the need for such assistance.

(b) Priority ratings may be used for the procurement of other authorized FSC Groups, Classes, and Items only in quantities required to meet the needs of approved programs of ratable agencies. The quantities of current procurement of each Group, Class, and Item shall be based on and shall not exceed the ratio of rated purchases to total purchases for that Group, Class, and Item that was consummated in the 6-month period preceding the first day of January and July in each year. Any other periodic cycle considered suitable and agreed to by the Domestic and International Business Administration, Department of Commerce, and the procuring agency may be substituted.

(c) In the interest of minimizing administrative costs, where rated procurement under paragraph (b)(2) of this section, constitutes 97 percent or more of the total procurement of a Group, Class, or Item, all of the Group, Class, or Item may be bought on ratings.

### § 329.3 Procedures.

Requests for additional authorizations of Classes, Groups, or Items should be presented to General Services Administration (AP), Washington, DC, 20405, accompanied by a statement of justification indicating why the Class, Group, or Item should be regarded as necessary or appropriate to promote the national defense and why defense-related requirements cannot be met without the use of priorities.

### § 329.4 Implementation.

Departments and agencies involved with this program shall issue implementing instructions and directives no later than 30 work days from the effective date of this order. Copies of such instructions, directives, and related documents shall be furnished to the General Services Administration (AP) on a routine basis as issued.

**PART 330—POLICY GUIDANCE  
AND DELEGATION OF AUTHORITIES  
FOR USE OF PRIORITIES AND  
ALLOCATIONS TO MAXIMIZE DO-  
MESTIC ENERGY SUPPLIES IN AC-  
CORDANCE WITH SUBSECTION  
101(c) OF THE DEFENSE PRO-  
DUCTION ACT OF 1950, AS  
AMENDED (DMO-13)**

Sec.

330.1 Purpose.

330.2 Policies.

330.3 Delegation of authority.

AUTHORITY: Defense Production Act of 1950, as amended, including amendment to sec. 101(c) by sec. 104 of the Energy Policy and Conservation Act (Pub. L. 94-163) 50 U.S.C. app. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239; E.O. 11912 of April 13, 1976.

SOURCE: 45 FR 44586, July 1, 1980, unless otherwise noted.

**§ 330.1 Purpose.**

This part:

(a) Establishes policy guidance on determination and use of priorities and allocations for materials and equipment to maximize domestic energy supplies pursuant to section 104 of the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 878), which added subsection 101(c) to the Defense Production Act of 1950, as amended (the Act); and

(b) Delegates authority and assigns responsibility related thereto pursuant to sections 7 and 8 of Executive Order 11912, dated April 13, 1976.

**§ 330.2 Policies.**

(a) The authority of subsection 101(c) of the Act to require the allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment to maximize domestic energy supplies shall be limited to those exceptional circumstances when it is found that:

(1) Such supplies of material and equipment are scarce, critical, and essential; and

(2) The maintenance or furtherance of exploration, production, refining, transportation, or conservation of energy supplies, or the construction and

maintenance of energy facilities, cannot reasonably be accomplished without exercising this authority.

(b) The authority contained in subsection 101(c) shall not be used to require priority performance under contracts or orders relating to, or the allocation of, any supplies of materials and equipment except for programs or projects to maximize domestic energy supplies as specifically determined by the Secretary of Energy, after coordination with the Director, Federal Emergency Management Agency.

(c) The allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment in support of authorized programs or projects shall be so undertaken as to ensure that:

(1) Supplies of the specified materials and equipment are available to the extent practicable on time and in proper quantity to authorized programs or projects.

(2) The demands of these authorized programs or projects are distributed among suppliers on a fair and equitable basis.

(3) Allotments of supplies of materials and equipment are not made in excess of actual current requirements of these authorized programs or projects.

(4) Fulfillment of the needs of these authorized programs and projects are achieved in such manner and to such degree as to minimize hardship in the market place.

(d) The authority of subsection 101(c) of the Act will not be used to control the general distribution of any supplies of material and equipment in the civilian market, as that phrase is used in subsection 101(b) of the Act, except after Presidential approval as required by subsection 7(d) of Executive Order 11912.

**§ 330.3 Delegation of authority.**

(a) The functions of the Director of the Federal Management Agency under subsection 101(c) of the Act are hereby delegated to the Secretary of Commerce with respect to the areas of responsibility designated and subject to the limitations prescribed and section 7 of Executive Order 11912. Specifically:

(1) The Secretary of Commerce is delegated the function, provided in subsection 101(c)(1) of the Act, of requiring the allocation of, or priority performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment to maximize domestic energy supplies, if the findings specified in subsection 101(c)(3) of the Act are made.

(2) The Secretary of Commerce is delegated those functions provided in subsection 101(c)(3) of the Act, but shall redelegate to the Secretary of Energy the function of making the findings that supplies of materials and equipment are critical and essential to maximize domestic energy supplies. The Secretary of Commerce shall retain the functions of finding that supplies of materials and equipment are scarce, and that the purposes described in subsection 101(c)(3)(B) of the Act cannot reasonably be accomplished without exercising the authority specified in subsection 101(c)(1). This finding will include, to the extent practicable, an assessment of the effects of using the authority for the project in question on other significantly impacted projects.

(b) The Director of the Federal Emergency Management Agency shall be responsible for the overall coordination and direction of the functions provided by subsection 101(c) of the Act in a manner similar to the exercise of functions under subsections 101(a) and 101(b) of the Act. In line with these functions, the Director is also responsible for resolving any conflicts between claimant agencies regarding particular supplies of materials and equipment. In addition, the Federal Emergency Management Agency will monitor the impact of the implementation of the authorities of subsection 101(c) and other authorities under section 101 of the Defense Production Act on each other and on the national economy.

(c) The functions assigned, delegated, or required to be redelegated by this order to the Secretary of Commerce and the Secretary of Energy may not be redelegated to other agencies without first being coordinated with the Director, Federal Emergency Management Agency.

(d) Procedures to execute the above delegations will be carried out in accordance with guidance provided by the Director, Federal Emergency Management Agency, pursuant to this order and Executive Order 11912.

## **PART 331—PRESERVATION OF THE MOBILIZATION BASE THROUGH THE PLACEMENT OF PROCUREMENT AND FACILITIES IN LABOR SURPLUS AREAS**

### **Sec.**

331.1 Purpose.

331.2 Policy.

331.3 Scope and applicability.

331.4 Special consideration.

331.5 Production facilities.

**AUTHORITY:** Reorganization Plan No. 3 of 1978, E.O. 10480, as amended, E.O. 12148.

**SOURCE:** 45 FR 34885, May 23, 1980, unless otherwise noted. Redesignated at 45 FR 44575, July 1, 1980.

### **§ 331.1 Purpose.**

Success of the national defense program depends upon efficient use of all of our resources, including the labor force and production facilities, which are preserved through utilizing the skills of both management and labor. A primary aim of Federal manpower policy is to encourage full utilization of existing production facilities and workers in preference to creating new plants or moving workers, thus assisting in the maintenance of economic balance and employment stability. When large numbers of new workers move to labor surplus areas, heavy burdens are placed on community facilities, such as schools, hospitals, housing, transportation, and utilities. On the other hand, when unemployment develops in certain areas, unemployment costs increase the total cost to the Government, and plants, tools, and workers' skills remain idle and unable to contribute to our national defense program. Consequently, it is the purpose of Defense Manpower Policy No. 4B to direct attention to the potential of labor surplus areas when awarding appropriate procurement contracts and when locating new plants or facilities.

**§ 331.2 Policy.**

(a) It is the policy of the Federal Government to award appropriate contracts to eligible labor surplus area concerns, to place production facilities in labor surplus areas, and to make the best use of our natural, industrial and labor resources in order to achieve the following objectives:

(1) To preserve management and employee skills necessary to the fulfillment of Government contracts and purchases;

(2) To maintain productive facilities;

(3) To improve utilization of the Nation's total economic potential by making use of the labor force resources of each area; and

(4) To help ensure timely delivery of required goods and services and to promote readiness for mobilization by locating procurement where the needed labor force and facilities are fully available.

(b) This policy is consonant with the intent of Public Law 95-89 and Public Law 95-507 as implemented by E.O. 12073. In carrying out this policy, Federal departments and agencies shall be guided by E.O. 12073, the policy direction of the Office of Federal Procurement Policy and implementing regulations.

**§ 331.3 Scope and applicability.**

The provisions of this policy apply to all Federal departments and agencies, except as otherwise prohibited by law. In addition to these normal duties;

(a) The Secretary of Commerce shall:

(1) In cooperation with State economic development agencies, the Secretary of Defense, the Administrator of General Services, and the Administrator of Small Business Administration, assist concerns which have agreed to perform contracts in labor surplus areas in obtaining Government procurement business by providing such concerns with timely information on proposed Government procurements.

(2) Urge concerns planning new production facilities to consider the advantages of locating in labor surplus areas.

(3) Provide technical advice and counsel to groups and organizations in labor surplus areas on planning industrial parks, industrial development or-

ganizations, expanding tourist business, and available Federal aids.

(b) The Administrator of the Small Business Administration shall make available to small business concerns in labor surplus areas all of its services, endeavor to ensure opportunity for maximum participation by such concerns in Government procurement, and give consideration to the needs of these concerns in the making of joint small business set-asides with Government procurement agencies.

(c) OFPP shall coordinate the maintenance by Federal agencies of current information on the manufacturing capabilities of labor surplus area concerns with respect to Government procurement and disseminate such information to Federal departments and agencies.

**§ 331.4 Special consideration.**

When an entire industry that sells a significant proportion of its production to the Government is generally depressed or has a significant proportion of its production, manufacturing and service facilities located in a labor surplus area, the Director, Federal Emergency Management Agency, or successor in function, after notice to and hearing of interested parties, will give consideration to appropriate measures applicable to the entire industry.

**§ 331.5 Production facilities.**

All Federal departments and agencies shall give consideration to labor surplus areas in the selection of sites for Government-financed production facilities, including expansion, to the extent that such selection is consistent with existing law and essential economic and strategic factors.

**PART 332—VOLUNTARY AGREEMENTS UNDER SECTION 708 OF THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED**

Sec.

332.1 General provisions.

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## § 332.1

AUTHORITY: Sec. 708, Defense Production Act of 1950, as amended (50 U.S.C. app. 2158); E.O. 10480, 3 CFR, 1949-1953 Comp., p. 961, as amended; E.O. 12148, 44 FR 43239.

SOURCE: 46 FR 2350, Jan. 9, 1981, unless otherwise noted.

### § 332.1 General provisions.

(a) Pursuant to section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158), the President may consult with representatives of industry, business, financing, agriculture, labor, or other interests, and may approve the making of voluntary agreements to help provide for the defense of the United States by developing preparedness programs and expanding productive capacity and supply beyond levels needed to meet essential civilian demand.

(b) *Sponsor.* (1) As used in this part, "sponsor" of a voluntary agreement is an officer of the Government who, pursuant to a delegation or redelegation of the functions given to the President by section 708 of the Defense Production Act (DPA) of 1950, as amended, proposes or otherwise provides for the development or carrying out of a voluntary agreement.

(2) The use of voluntary agreements, as authorized by section 708 of the DPA to help provide for the defense of the United States through the development of preparedness programs, is an activity coordinated by the Director of the Federal Emergency Management Agency, as provided by sections 101 and 501(a) of Executive Order 10480, as amended.

(3) The sponsor of a voluntary agreement shall carry out sponsorship functions subject to the direction and control of the Director of the Federal Emergency Management Agency.

(c) This part applies to the development and carrying out under section 708 of the DPA, as amended, of all voluntary agreements, and the carrying out of any voluntary agreement which was entered into under former section 708 of the DPA and in effect immediately prior to April 14, 1976, and which is in a period of extension as authorized by subsection 708(f)(2) of the DPA.

(d) The rules in the part void any provision of a voluntary agreement to

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which they apply, if that provision is contrary to or inconsistent with them. Each voluntary agreement shall be construed as containing every substantive provision that these rules require, whether or not a particular provision is included in the agreement.

(e) Pursuant to subsection 708(d) of the DPA, the sponsor may establish such advisory committees as he deems to be necessary for developing or carrying out voluntary agreements. Such advisory committees shall comply with this part as well as with the requirements and procedures of the Federal Advisory Committee Act (Pub. L. 92-463, as amended).

### § 332.2 Developing voluntary agreements.

(a) *Purpose and scope.* This section establishes the standards and procedures by which voluntary agreements may be developed through consultation, pursuant to subsection 708(c) of the DPA.

(b) *Proposal to develop an agreement.*

(1) A sponsor who wishes to develop a voluntary agreement shall submit to the Attorney General and the Director of the Federal Emergency Management Agency a document proposing the agreement. The proposal will include statements as to: The purpose of the agreement; the factual basis for making the finding required in subsection 708(c)(1) of the DPA; the proposed participants in the agreement; and any coordination with other Federal agencies accomplished in connection with the proposal.

(2) If the Attorney General, after consultation with the Chairman of the Federal Trade Commission, approves this proposal, the sponsor shall then initiate one or more meetings of interested persons to develop the agreement.

(c) *Conduct of meetings held to develop the agreement.* (1) The sponsor shall give to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency adequate written notice of each meeting to develop a voluntary agreement. The sponsor shall also publish in the FEDERAL REGISTER notice of the time, place, and nature of each meeting at least seven days prior to the meeting.

(2) The sponsor shall chair each meeting held to develop a voluntary agreement. Both the Attorney General and the Chairman of the Federal Trade Commission, or their delegates, shall attend each of these meetings.

(3) Any interested person may attend a meeting held to develop a voluntary agreement, unless the sponsor of the agreement limits attendance pursuant to § 332.5 of this part.

(4) Any interested person may, as set out in the FEDERAL REGISTER meeting notice, submit written data and views concerning the proposed voluntary agreement, and at the discretion of the Chairman of the meeting, may be given the opportunity for oral presentation.

(d) *Maintenance of records.* (1) The sponsor is responsible for the making of a full and verbatim transcript of each meeting. The Chairman shall send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Federal Emergency Management Agency, and any other party or repository required by law.

(2) The sponsor of a voluntary agreement shall maintain each meeting transcript and voluntary agreement, and make them available for public inspection and copying the extent required by § 332.5 of this part.

(e) *Effectiveness of agreements.* The following steps must occur before a new voluntary agreement or an extension of an existing agreement may become effective:

(1) The sponsor must approve the agreement and certify in writing that it is necessary to carry out the purposes of subsection 708(c)(1) of the DPA;

(2) The Director of the Federal Emergency Management Agency must approve this certification, and submit it to the Attorney General with a request for a written finding; and

(3) The Attorney General, after consulting with the Chairman of the Federal Trade Commission, must issue a written finding that the purposes of subsection 708(c)(1) can not reasonably be achieved through a voluntary agreement having less anti-competitive effects or without any voluntary agreement.

### § 332.3 Carrying out voluntary agreements.

(a) *Purpose and scope.* This section establishes the standards and procedures by which the participants in each approved voluntary agreement shall carry out the agreement.

(b) *Participants.* The participants in each voluntary agreement shall be reasonably representative of the appropriate industry or segment of that industry.

(c) *Conduct of meetings held to carry out an agreement.* (1) The sponsor of a voluntary agreement shall initiate, or approve in advance, each meeting of the participants in the agreement held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry out the agreement.

(2) The sponsor shall provide to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency adequate prior notice of the time, place, and nature of each meeting, and a proposed agenda of each meeting. The sponsor shall also publish in the FEDERAL REGISTER, reasonably in advance of each meeting, a notice of time, place, and nature of the meeting. If the sponsor has determined, pursuant to § 332.5 of this part, to limit attendance at the meeting, the sponsor shall publish this FEDERAL REGISTER notice within ten days of the meeting.

(3) Any interested person may attend a meeting held to carry out a voluntary agreement unless the sponsor has restricted attendance pursuant to § 332.5 of this part. A person attending a meeting under this section may present oral or written data, views, and arguments to any limitations on the manner of presentation that the sponsor may impose.

(4) No meeting shall be held to carry out any voluntary agreement unless a Federal employee, other than an individual employed pursuant to 5 U.S.C. 3109, is in attendance. Any meeting to carry out a voluntary agreement may be attended by the sponsor of the agreement, the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Federal Emergency Management Agency, or their delegates.

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(5) Notwithstanding any other provision of this section, a meeting between a single participant and the sponsor solely to deliver or exchange information is not subject to the requirements and procedures of this section, provided that a copy of the information is promptly delivered to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency.

(d) *Maintenance of records.* (1) The participants in any voluntary agreement shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications among themselves or with any other member of their industry, related to the carrying out of the voluntary agreement. The participants shall agree, in writing, to make available to the sponsor, the Attorney General, the Chairman of the Federal Trade Commission and the Director of the Federal Emergency Management Agency for inspection and copying at reasonable times and upon reasonable notice any item that this section requires them to maintain.

(2) Any person required by this paragraph to maintain records shall indicate specific portions, if any, that such person believes should not be disclosed to the public pursuant to § 332.5 of this part, and the reasons therefor. Any item made available to a Government official named in this paragraph shall be available from that official for public inspection and copying to the extent set forth in § 332.5 of this part.

#### § 332.4 Termination or modifying voluntary agreements.

The Attorney General may terminate or modify a voluntary agreement, in writing, after consultation with the Chairman of the Federal Trade Commission and the sponsor of the agreement. The sponsor of the agreement, with the concurrence of or at the direction of the Director of the Federal Emergency Management Agency, may terminate or modify a voluntary agreement, in writing, after consultation with the Attorney General and the Chairman of the Federal Trade Commission. Any person who is a party to a voluntary agreement may terminate

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his participation in the agreement upon written notice to the sponsor. Any antitrust immunity conferred upon the participants in that agreement by subsection 708(j) of the DPA shall not apply to any act or omission occurring after the termination of the voluntary agreement. Immediately upon modification of a voluntary agreement, no antitrust immunity shall apply to any subsequent act or omission that is beyond the scope of the modified agreement.

#### § 332.5 Public access to records and meetings.

(a) Interested persons may, pursuant to 5 U.S.C. 552, inspect or copy any voluntary agreement, minutes of meetings, transcripts, records, or other data maintained pursuant to these rules.

(b) Except as provided by paragraph (c) of this section, interested persons may attend any part of a meeting held to develop or carry out a voluntary agreement pursuant to these rules.

(c) The sponsor of a voluntary agreement may withhold material described in this section from disclosure and restrict attendance at meetings only on the grounds specified in:

(1) Section 552(b)(1) of 5 U.S.C., which applies to matter specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy. This section shall be interpreted to include matter protected under Executive Order 12065, dated June 28, 1978 (3 CFR 1979–1975 Comp. p. 678), establishing categories and criteria for classification; and

(2) Section 552(b)(3) of 5 U.S.C., which applies to matter specifically exempted from disclosure by statute; and

(3) Section 552(b)(4) of 5 U.S.C., which applies to trade secrets and commercial or financial information obtained from a person as privileged and confidential.

#### PART 333 [RESERVED]

#### PART 334—GRADUATED MOBILIZATION RESPONSE

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334.2 Policy.

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334.4 Definitions.

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AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. app. 2061 *et seq.*; E.O. 12148 of July 20, 1979, 3 CFR, 1979 Comp., p. 412; E.O. 10480 of Aug. 14, 1953, 3 CFR, 1949-53 Comp., p. 962; E.O. 12472 of Apr. 3, 1984; 3 CFR, 1984 Comp., p. 193; E.O. 12656 of Nov. 18, 1988, 53 FR 47491.

SOURCE: 55 FR 1821, Jan. 19, 1990, unless otherwise noted.

### § 334.1 Purpose.

(a) Provides policy guidance pursuant to the Defense Production Act of 1950, as amended; section 1-103 of Executive Order 12148, as amended, which includes functions continued from E.O. 11051; section 104(f) of Executive Order 12656; and part 2 of Executive Order 10480.

(b) Establishes a Graduated Mobilization Response (GMR) system for developing and implementing mobilization actions that are responsive to a wide range of national security threats and ambiguous or specific warning indicators. GMR provides for a coherent decision making process with which to proceed with specific responses to an identified crisis or emergency.

(c) Provides guidance to the Federal departments and agencies for developing plans that are responsive to a GMR system and for preparing costed option packages, as appropriate, to implement the plans.

### § 334.2 Policy.

(a) As established in Executive Order 12656, the policy of the United States is to have sufficient emergency response capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. Accordingly, each Federal department and agency shall prepare its national security emergency preparedness plans and programs to respond adequately and in a timely manner to all national security emergencies.

(b) As part of emergency response, the GMR system should be incorporated in each department's and agency's emergency preparedness plans and

programs to provide appropriate and effective response options for consideration in reacting to ambiguous and specific warnings.

(c) Departments and agencies will be provided early warning information developed by the intelligence community and policy statements of the President.

(d) Emergency resource preparedness planning is essential to ensure that the nation is adequately prepared to respond to potential national emergencies. Such emergency resource preparedness planning requires an exchange of information and planning factors among the various departments and agencies responsible for different resource preparedness activities.

(e) To carry out their emergency planning activities, civilian departments and agencies require the Department of Defense's (DOD) assessment of potential military demands that would be made on the economy in a full range of possible national security emergencies. Similarly, DOD planning should be conducted using planning regimes consistent with the policies and plans of the civilian resource departments and agencies.

(f) Under section 104(c) of Executive Order 12656, FEMA is responsible for coordinating the implementation of national emergency preparedness policy with Federal departments and agencies and with state and local governments and, therefore, is responsible for developing a system of planning procedures for integrating the emergency preparedness actions of federal, state and local governments.

(g) Federal departments and agencies shall design their preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(1) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies; and

(2) Identification of actions that could be taken at the Federal and local levels of government in the early stages of a national security emergency or pending national security



emergency to mitigate the impact of or reduce significantly the leadtime associated with full emergency action implementation.

#### § 334.3 Background.

(a) The GMR system is designed to take into account the need to mobilize the Nation's resources in response to a wide range of crisis or emergency situations. GMR is a flexible decision making process of preparedness and response actions which are appropriate to warning indicators or an event. Thus, GMR allows the government, as a whole, to take small or large, often reversible, steps to increase its national security emergency preparedness posture.

(b) Crises, especially those resulting in major military activities, always have some political or economic context. As the risks of military action increase, nations undertake more extensive preparations over a longer period of time to increase their military power. Such preparations by potential adversaries shape the nature and gravity of the threat as well as its likelihood and timing of occurrence. These measures permit the development of reliable indicators of threat at an early time in the evolution of a crisis. Depending on the nature of the situation or event and the nation involved, these early warning indicators may emanate from the political, socio-economic and/or industrial sectors.

(c) The GMR system enables the nation to approach mobilization planning and actions as part of the deterrent response capability and to use it to reduce the probability of conflict. Alternatively, if deterrence should fail, the GMR system would enable the nation to undertake a series of phased actions intended to increase its ability to meet defense and essential civilian requirements. The GMR system integrates the potential strength of the national economy into U.S. national security strategy.

#### § 334.4 Definitions.

(a) *Graduated Mobilization Response* (GMR) is a system for integrating mobilization actions designed to respond to ambiguous and/or specific warnings. These actions are designed to mitigate

the impact of an event or crisis and reduce significantly the lead time associated with a full national emergency action implementation.

(b) *National security emergency* is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States.

(c) *Mobilization* is the process of marshalling resources, both civil and military, to respond to and manage a national security emergency.

(d) *GMR Plans* are those agency documents that describe, in general, the actions that an agency could take in the early stages of a national security emergency, or upon receipt of warning information about a possible national security emergency. These actions would be designed to mitigate the impact of, or reduce significantly, the lead times associated with full emergency action implementation. Such plans are required by section 201(4)(b) of Executive Order 12656.

(e) *A Costed Option Package* is a document that describes in detail a particular action that an agency could take in the early stages of a national security emergency. The general content of a GMR costed option package includes alternative response options; the resource implications of each option; shortfalls, costs, timeframes and political feasibility.

#### § 334.5 GMR system description.

The GMR system contains three stages of mobilization activity (additional intermediate GMR stages may be developed). For example, a Federal department or agency might divide "Crisis Management" into two, three, or more levels as suits its needs.

(a) *Stage 3, Planning and Preparation.* During the planning and preparation stage, Federal departments and agencies develop their GMR plans and maintain capability to carry out their mobilization-related responsibilities in accordance with section 201 of Executive Order 12656. General types of problems likely to arise in a crisis situation are identified along with possible methods for dealing with them. Investment programs can be undertaken to overcome identified problems.

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(b) *Stage 2, Crisis Management.* During the crisis management stage, GMR plans are reviewed and capabilities will be re-examined in light of an actual event or crisis perceived to be emerging.

(1) Federal departments and agencies may need to gather additional data on selected resources or increase their preparedness activities. Costed Option Packages may need to be updated or new ones prepared for the response option measures in each of the department's and agency's area of responsibility. For example, when it appears likely that increased national resources may be required, resource readiness could be improved through the procurement of essential long lead time items, especially those that can be used even if the situation does not escalate. In general, long lead time preparedness actions would be considered for implementation at this time.

(2) Many preparedness actions at this stage would be handled through re-programming, but the Costed Option Packages may also require new funding.

(3) If the crisis worsens, and prior to the declaration of national emergency, it may be necessary to surge certain production and stockpile items for future use.

(c) *Stage 1, National Emergency/War.* During a national emergency or declaration of war, mobilization of all national resources escalates and GMR will be subsumed into the overall mobilization effort. As military requirements increase, the national resources would increasingly be focused on the national security emergency. This would involve diverting non-essential demand for scarce resources from peacetime to defense uses, and converting industry from commercial to military production. Both surge production and expansion of the nation's productive capacity may also be necessary. Supplemental appropriations may be required for most Federal departments and agencies having national security emergency responsibilities.

### § 334.6 Department and agency responsibilities.

(a) During Stage 3, each Federal department and agency with mobilization responsibilities will develop GMR plans as part of its emergency preparedness planning process in order to meet possible future crisis. Costed Option Packages will be developed for actions that may be necessary in the early warning period. Option packages will be reviewed, focused and refined during Stage 2 to meet the particular emergency.

(b) Each department and agency should identify response actions appropriate for the early stage of any crisis or emergency situation, which then will be reviewed, focused and refined in Stage 2 for execution, as appropriate. GMR plans should contain a menu of costed option packages that provide details of alternative measures that may be used in an emergency situation.

(c) FEMA will provide guidance pursuant to Executive Order 12656 and will coordinate GMR plans and option packages of DOD and the civilian departments and agencies to ensure consistency and to identify areas where additional planning or investment is needed.

(d) During State 2, FEMA will coordinate department and agency recommendations for action and forward them to the National Security Advisor to make certain that consistency with the overall national strategy planning is achieved.

(e) Departments and agencies will refine their GMR plans to focus on the specific crisis situation. Costed option packages should be refined to identify the resources necessary for the current crisis, action taken to obtain those resources, and GMR plans implemented consistent with the seriousness of the crisis.

(f) At Stage 1, declaration of national emergency or war, the crisis is under the control of NSC or other central authority, with GMR being integrated into partial, full or total mobilization. At this point the more traditional mechanisms of resource mobilization

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are pursued, focusing on resource allocation and adjudication with cognizance of the essential civilian demand.

(g) Programs and plans developed by the departments and agencies under this guidance should be shared, as appropriate, with States, local governments and the private sector to provide a baseline for their development of supporting programs and plans.

### § 334.7 Reporting.

The Director of FEMA shall provide the President with periodic assessments of the Federal departments and agencies capabilities to respond to national security emergencies and periodic reports to the National Security Council on the implementation of the national security emergency preparedness policy. Pursuant to section 201(15) of Executive Order 12656, departments and agencies, as appropriate, shall consult and coordinate with the Director of FEMA to ensure that their activities and plans are consistent with current National Security Council guidelines and policies. An evaluation of the Federal departments and agencies participation in the graduated mobilization response program may be included in these reports.

## PARTS 335–349 [RESERVED]

## PART 350—REVIEW AND APPROVAL OF STATE AND LOCAL RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

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AUTHORITY: 42 U.S.C. 5131, 5201, 50 U.S.C. app. 2253(g); Sec. 109 Pub. L. 96–295; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

SOURCE: 48 FR 44335, Sept. 28, 1983, unless otherwise noted.

### § 350.1 Purpose.

The purpose of the regulation in this part is to establish policy and procedures for review and approval by the Federal Emergency Management Agency (FEMA) of State and local emergency plans and preparedness for the offsite effects of a radiological emergency which may occur at a commercial nuclear power facility. Review and approval of these plans and preparedness involves preparation of findings and determinations of the adequacy of the plans and capabilities of State and local governments to effectively implement the plans.

### § 350.2 Definitions.

As used in this part, the following terms are defined:

(a) *Director* means the Director, FEMA, or designee;

(b) *Regional Director* means a Regional Director of FEMA, or designee;

(c) *Associate Director* means the Associate Director, State and Local Programs and Support, FEMA, or designee;

(d) *FEMA* means the Federal Emergency Management Agency;

(e) *NRC* means the Nuclear Regulatory Commission;

(f) *EPZ* means Emergency Planning Zone.

(g) *Emergency Planning Zone (EPZ)* is a generic area around a commercial nuclear facility used to assist in offsite emergency planning and the development of a significant response base. For commercial nuclear power plants, EPZs of about 10 and 50 miles are delineated for the plume and ingestion exposure pathways respectively.

(h) *Plume Exposure Pathway* refers to whole body external exposure to gamma radiation from the plume and from deposited materials and inhalation exposure from the passing radioactive plume. The duration of primary

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exposures could range in length from hours to days.

(i) *Ingestion Exposure Pathway* refers to exposure primarily from ingestion of water or foods such as milk and fresh vegetables that have been contaminated with radiation. The duration of primary exposure could range from hours to months.

(j) *Full participation* refers to an exercise in which: (1) State and local government emergency personnel are engaged in sufficient numbers to verify the capability to respond to the actions required by the accident scenario; (2) the integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant is tested; and (3) the implementation of the observable portions of State and/or local plans is tested.

(k) *Partial participation* refers to the engagement of State and local government emergency personnel in an exercise sufficient to adequately test direction and control functions for protective action decisionmaking related to emergency action levels and communication capabilities among affected State and local governments and the licensee.

(l) *Remedial exercise* is one that tests deficiencies of previous joint exercise that are considered significant enough to impact on the public health and safety.

(m) *Local government* refers to boroughs, cities, counties, municipalities, parishes, towns, townships and other local jurisdictions within the plume exposure pathway EPZ when any of these entities has specific roles in emergency planning and preparedness in the EPZ.

(n) *Site* refers to the location at which there is one or more commercial nuclear power plants. A nuclear power plant is synonymous with a nuclear power facility.

### § 350.3 Background.

(a) On December 7, 1979, the President directed the Director of FEMA to take the lead in State and local emergency planning and preparedness activities with respect to nuclear power facilities. This included a review of the existing emergency plans both in States with operating reactors and

those with plants scheduled for operation in the near future.

(b) This assignment was given to FEMA because of its responsibilities under Executive Order 12148 to establish Federal policies for and coordinate civil emergency planning, management and assistance functions and to represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness programs. Under section 201 of the Disaster Relief Act of 1974 (42 U.S.C. 5131), and other statutory functions, the Director of FEMA is charged with the responsibility to develop and implement plans and programs of disaster preparedness.

(c) There are two sections in the NRC's fiscal year 1982/1983 Appropriation Authorization (Pub. L. 97-415) that pertain to the scope of this rule.

(1) Section 5 provides for the issuance of an operating license for a commercial nuclear power plant by the NRC if it is determined that there exists a State, local or utility plan which provides assurance that public health and safety is not endangered by the operation of the facility. This section would allow the NRC to issue an operating license for such plants without FEMA-approved State and local government plans.

(2) Section 11 provides for the issuance of temporary licenses for operating a utilization facility at a specific power level to be determined by the Commission, pending final action by the Commission on the application. Also, this section authorizes the NRC to issue temporary operating licenses for these facilities without the completion of the required (NRC) Commission hearing process. A petition for such a temporary license may not be filed until certain actions are completed including the submission of a State, local or utility emergency response plan for the facility.

(d) To carry out these responsibilities, FEMA is engaged in a cooperative effort with State and local governments and other Federal agencies in the development of State and local plans and preparedness to cope with

the offsite effects resulting from radiological emergencies at commercial nuclear power facilities. FEMA developed and published the Federal Radiological Emergency Response Plan 50 FR 46542 Nov. 8, 1985, to provide the overall support to State and local governments, for all types of radiological incidents including those occurring at nuclear power plants.

(e) FEMA has entered into a Memorandum of Understanding (MOU) with the NRC to which it will furnish assessments, findings and determinations as to whether State and local emergency plans and preparedness are adequate and continue to be capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). These findings and determinations will be used by NRC under its own rules in connection with its licensing and regulatory requirements and FEMA will support its findings in the NRC licensing process and related court proceedings.

(f) Notwithstanding the procedures set forth in these rules for requesting and reaching a FEMA administrative approval of State and local plans, findings and determinations on the current status of emergency preparedness around particular sites may be requested by the NRC and provided by FEMA for use as needed in the NRC licensing process. These findings and determinations may be based upon plans currently available to FEMA or furnished to FEMA by the NRC through the NRC/FEMA Steering Committee.

(g) An environmental assessment has been prepared on which FEMA has determined that this rule will not have a significant impact on the quality of the human environment.

[48 FR 44335, Sept. 28, 1983, as amended at 51 FR 34606, Sept. 30, 1986]

#### § 350.4 Exclusions.

The regulation in this part does not apply to, nor will FEMA apply any criteria with respect to, any evaluation, assessment or determination regarding the NRC licensee's emergency plans or preparedness, nor shall FEMA make any similar determination with respect to the integration of offsite and NRC

licensee emergency preparedness except as these assessments and determinations affect the emergency preparedness of State and local governments. The regulation in this part applies only to State and local planning and preparedness with respect to emergencies at commercial nuclear power facilities and does not apply to other facilities which may be licensed by NRC, nor to United States Government-owned, non-licensed facilities nor the jurisdictions surrounding them.

#### § 350.5 Criteria for review and approval of State and local radiological emergency plans and preparedness.

(a) Section 50.47 of NRC's Emergency Planning Rule (10 CFR parts 50 (appendix E) and 70 as amended) and the joint FEMA–NRC *Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants* (NUREG–0654/FEMA–REP–1, Rev. 1, November 1980) which apply insofar as FEMA is concerned to State and local governments, are to be used in reviewing, evaluating and approving State and local radiological emergency plans and preparedness and in making any findings and determinations with respect to the adequacy of the plans and the capabilities of State and local governments to implement them. Both the planning and preparedness standards and related criteria contained in NUREG–0654/ FEMA–REP–1, Rev. 1 are to be used by FEMA and the NRC in reviewing and evaluating State and local government radiological emergency plans and preparedness. For brevity, only the planning standards contained in NUREG–0654/ FEMA–REP–1, Rev. 1 are presented below.

(1) Primary responsibilities for emergency response by the nuclear facility licensee, and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established and each principal response organization has staff to respond to and augment its initial response on a continuous basis.

(2) On-shift facility licensee responsibilities for emergency response are

unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available and the interfaces among various onsite response activities and offsite support and response activities are specified. (This standard applies only to NRC licensees but is included here for completeness.)

(3) Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made and other organizations capable of augmenting the planned response have been identified.

(4) A standard emergency classification and action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee, and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.

(5) Procedures have been established for notification, by the licensee, of State and local response organizations and for the notification of emergency personnel by all response organizations; the content of initial and followup messages to response organizations and the public has been established; and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

(6) Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public.

(7) Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency (e.g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance and procedures

for coordinated dissemination of information to the public are established.

(8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained.

(9) Adequate methods, systems and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

(10) A range of protective actions has been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

(11) Means for controlling radiological exposures, in an emergency, are established for emergency workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guides.

(12) Arrangements are made for medical services for contaminated injured individuals.

(13) General plans for recovery and reentry are developed.

(14) Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities, periodic drills are (will be) conducted to develop and maintain key skills and deficiencies identified as a result of exercises or drills are (will be) corrected.

(15) Radiological emergency response training is provided to those who may be called upon to assist in an emergency.

(16) Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.

(b) In order for State or local plans and preparedness to be approved, such plans and preparedness must be determined to adequately protect the public health and safety by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency.

**§ 350.6 Assistance in development of State and local plans.**

(a) An integrated approach to the development of offsite radiological emergency plans by States, localities and the licensees of NRC with the assistance of the Federal Government is the approach most likely to provide the best protection to the public. Hence, Federal agencies, including FEMA Regional staff, will be made available upon request to assist States and localities in the development of plans.

(b) There now exists in each of the ten standard Federal Regions a Regional Assistance Committee (RAC) (formerly the Regional Advisory Committee) chaired by a FEMA Regional official and having members from the Nuclear Regulatory Commission, Department of Health and Human Services, Department of Energy, Department of Transportation, Environmental Protection Agency, the United States Department of Agriculture and Department of Commerce. Whereas in 44 CFR part 351, the Department of Defense is listed as a potential member of the RACs, it is not listed in this rule because military nuclear facilities are not the subject of concern. The RACs will assist State and local government officials in the development of their radiological emergency response plans, and will review plans and observe exercises to evaluate the adequacy of these plans and related preparedness. This assistance does not include the actual writing of State and local government plans by RAC members.

(c) In accomplishing the foregoing, the RACs will use the standards and criteria in NUREG-0654/FEMA-REP-1, Rev. 1, and will render such technical assistance as may be required, appropriate to their agency mission and expertise. In observing and evaluating exercises, the RACs will identify, soon after an exercise, any deficiencies observed in the planning and preparedness effort including deficiencies in resources, training of staff, equipment, staffing levels and deficiencies in the qualifications of personnel.

**§ 350.7 Application by State for review and approval.**

(a) A State which seeks formal review and approval by FEMA of the

State's radiological emergency plan shall submit an application for such review and approval to the FEMA Regional Director of the Region in which the State is located. The application, in the form of a letter from the Governor or from such other State official as the Governor may designate, shall contain one copy of the completed State plan, including coverage of response in the ingestion exposure pathway EPZ. The application will also include plans of all appropriate local governments. The application shall specify the site or sites for which plan approval is sought. For guidance on the local government plans that should be included with an application, refer to Part I.E. NUREG-0654/FEMA-REP-1, Rev. 1, entitled Contiguous Jurisdiction Governmental Emergency Planning (see (e)). Only a State may request formal review of State or local radiological emergency plans.

(b) Generally, the plume exposure pathway EPZ for nuclear power facilities shall consist of an area about 10 miles (16 Km) in radius and the ingestion exposure pathway EPZ shall consist of an area about 50 miles (80 Km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power facility shall be determined by State and local governments in consultation with FEMA and NRC taking into account such local conditions as demography, topography, land characteristics, access routes and local jurisdiction boundaries. The size of the EPZs may be determined by NRC in consultation with FEMA on a case-by-case basis for gas cooled reactors and for reactors with an authorized power level less than 250 Mw thermal. The plans for the ingestion exposure pathway shall focus on such actions as are appropriate to protect the public from ingesting contaminated food and water.

(c) A State may submit separately its plans for the EPZs and the local government plans related to individual nuclear power facilities. The purpose of separate submissions is to allow approval of a State plan, and of the plans necessary for specific nuclear power facilities in a multiple-facility State, while not approving or acting on the plans necessary for other nuclear

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power facilities within the State. If separate submissions are made, appropriate adjustments in the State plan may be necessary. In any event, FEMA approval of State plans and appropriate local government plans shall be site specific.

(d) The applications shall contain a statement that the State plan, together with the appropriate local plans, is, in the opinion of the State, adequate to protect the public health and safety of its citizens living within the emergency planning zones for the nuclear power facilities included in the submission by providing reasonable assurance that State and local governments can and intend to effect appropriate protective measures offsite in the event of a radiological emergency.

(e) FEMA and the States will make suitable arrangements in the case of overlapping or adjacent jurisdictions to permit an orderly assessment and approval of interstate or interregional plans.

### § 350.8 Initial FEMA action on State plan.

(a) The Regional Director shall acknowledge in writing within ten days the receipt of the State application.

(b) FEMA shall publish a notice signed by the Regional Director or designee in the FEDERAL REGISTER within 30 days after receipt of the application, that an application from a State has been received and that copies are available at the Regional Office for review and copying in accordance with 44 CFR 5.26.

(c) The Regional Director shall furnish copies of the plan to members of the RAC for their analysis and evaluation.

(d) The Regional Director shall make a detailed review of the State plan, including those of local governments, and assess the capability of State and local governments to effectively implement the plan (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). Evaluation and comments of the RAC members will be used as part of the review process.

(e) In connection with the review, the Regional Director may make sugges-

tions to States concerning perceived gaps or deficiencies in the plans, and the State may amend the plan at any time prior to forwarding to the Associate Director of FEMA.

(f) Two conditions for FEMA approval of State plans (including local government plans) are the requirements for an exercise (see § 350.9), and for public participation (see §§ 350.9 and 350.10.). These activities occur during the Regional review and prior to the forwarding of the plan to the Associate Director.

### § 350.9 Exercises.

(a) Before a Regional Director can forward a State plan to the Associate Director for approval, the State, together with all appropriate local governments, must conduct a joint exercise of that State plan, involving full participation<sup>1</sup> of appropriate local government entities, the State and the appropriate licensee of the NRC. To the extent achievable, this exercise shall include participation by appropriate Federal agencies. This exercise shall be observed and evaluated by FEMA and by representatives of other Federal agencies with membership on the RACs and by NRC with respect to licensee response. Within 48 hours of the completion of the exercise, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Director to discuss the preliminary results of the exercise. If the exercise discloses any deficiencies in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials. To the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements or take other corrective measures, such as remedial exercises,<sup>1</sup> to demonstrate to the Regional Director that identified weaknesses have been corrected.

(b) The Regional Director shall be the FEMA official responsible for certifying to the Associate Director that an

<sup>1</sup>See § 350.2 for definitions of "full participation" and "remedial exercises".



exercise of the State plan has been conducted, and that changes and corrective measures in accordance with paragraph (a) of this section have been made.

(c) State and local governments that have fully participated in a joint exercise within one year prior to the effective date of this final rule will have continuing approval of their radiological emergency plans and preparedness by following the frequency indicated in paragraphs (c) (1) through (4) of this section. State and local governments that have not fully participated in a joint exercise within one year prior to the effective date of this final rule will follow the frequency indicated in paragraphs (c) (1) through (4) of this section after completion of a joint exercise in which they have fully participated. If, in developing exercise schedules with State and local governments to implement the requirements in paragraphs (c) (1) through (4) of this section, the Regional Director finds that unusual hardships would result, he may seek relief from the Associate Director.

(1) Each State which has a commercial nuclear power site within its boundaries or is within the 10-mile plume exposure pathway Emergency Planning Zone of such site shall fully participate in an exercise jointly with the nuclear power plant licensee and appropriate local governments at least every two years.

(2) Each State with multiple sites within its boundaries shall fully participate in a joint exercise at some site on a rotational basis at least every 2 years. When not fully participating in an exercise at a site, the State shall partially participate<sup>2</sup> at that site to support the full participation of appropriate local governments. Priority shall be given to new facilities seeking an operating license from the NRC and which have not fully participated in a joint exercise involving the State, local governments and the licensee at that site. State and local governments will coordinate the scheduling of these exercises with the appropriate FEMA

and NRC Regional Offices and the affected licensees.

(3) Each appropriate local government which has a site within its boundaries or is within the 10-mile emergency planning zone shall fully participate in a joint exercise with the licensee and the State at least every two years. For those local governments that have planning and preparedness responsibilities for more than one facility, the Regional Director may seek an exemption from this requirement by recommending alternative arrangements for approval by the Associate Director.

(4) States within the 50-mile emergency planning zone of a site shall exercise their plans and preparedness related to ingestion exposure pathway measures at least once every five years in conjunction with a plume exposure pathway exercise for that site.

(5) Remedial exercises may be required to correct deficiencies observed in exercises conducted for continued FEMA approval. Should this occur, the FEMA Regional Director will determine the participation required from the States and/or local governments.

(d) Within 48 hours of the completion of an exercise conducted for continued FEMA approval, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Director to discuss the preliminary results of the exercise. If the exercise discloses any deficiencies in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials. To the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements or take other corrective measures, such as remedial exercises, to demonstrate to the Regional Director that identified weaknesses have been corrected. The Regional Director shall forward his or her evaluation of the exercise conducted for continued FEMA approval to the Associate Director including the certification that changes and corrective measures have been made.

<sup>2</sup>See § 350.2 for definition of “partial exercise”.

(e) Following the exercise conducted for continued FEMA approval, the Regional Director shall conduct a meeting in the vicinity of the nuclear power facility which will include the exercise participants, representatives from the NRC and other appropriate Federal agencies and the public and media as observers. The purpose of this meeting is to discuss the evaluation of the exercise. At the discretion of the Regional Director, written comments from the public and media may be submitted at or after the meeting. These comments will be taken into consideration by the Regional Director in his or her evaluation.

(f) After FEMA approval of a State and local plan has been granted, failure to exercise the State and local plans at the frequency and participation described in this section shall be grounds for withdrawing FEMA approval. (See § 350.13.)

**§ 350.10 Public meeting in advance of FEMA approval.**

(a) During the FEMA Regional Office review of a State plan and prior to the submission by the Regional Director of the evaluation of the plan and exercise to the Associate Director, the FEMA Regional Director shall assure that there is at least one public meeting conducted in the vicinity of the nuclear power facility. The purpose of such a meeting, which may be conducted by the State or by the Regional Director, shall be to:

(1) Acquaint the members of the public in the vicinity of each facility with the content of the State and related local plans, and with the conduct of the joint exercise which tested the plans;

(2) Answer any questions about FEMA review of the plan and the exercise;

(3) Receive suggestions from the public concerning improvements or changes that may be necessary; and

(4) Describe to the public the way in which the plan is expected to function in the event of an actual emergency.

(b) The Regional Director should assure that representatives from appropriate State and local government agencies, and the affected utility appear at such meetings to make presentations and to answer questions from

the public. The public meeting should be held after the first joint (utility, State and local governments) exercise at a time mutually agreed to by State and local authorities, licensee and FEMA and NRC Regional officials. This meeting shall be noticed in the local newspaper with the largest circulation in the area, or other such media as the Regional Director may select, on at least two occasions, one of which is at least two weeks before the meeting takes place and the other is within a few days of the meeting date. Local radio and television stations should be notified of the scheduled meeting at least one week in advance. Representatives from NRC and other appropriate Federal agencies should also be invited to participate in these meetings. If, in the judgment of the FEMA Regional Director, the public meeting or meetings reveal deficiencies in the State plan and/or the joint exercise, the Regional Director shall inform the State of the fact together with recommendations for improvement. No FEMA approval of State and local plans and preparedness shall be made until a meeting described in this paragraph shall have been held at or near the nuclear power facility site for which the State is seeking approval.

**§ 350.11 Action by FEMA Regional Director.**

(a) Upon completion of his or her review, including conduct of the exercise required by § 350.9 and after the public meeting required by § 350.10, the Regional Director shall prepare an evaluation of the State plan, including plans for local governments. Such evaluation shall be specific with respect to the plans applicable to each nuclear facility so that findings and determinations can be made by the Associate Director on a site-specific basis.

(b) The Regional Director shall evaluate the adequacy of State and local plans and preparedness on the basis of the criteria set forth in § 350.5, and shall report the evaluation with respect to each of the planning standards mentioned therein as such apply to State and local plans and preparedness.

(c) The Regional Director shall forward the State plan together with his or her evaluation and other relevant

record material to the Associate Director. Relevant record material will include the results of the exercise (i.e., deficiencies noted and corrections made), a summary of the deficiencies identified during the public meeting, recommendations made to the State and commitments made by the State for effecting improvements in its plans and preparedness and actions taken by the State.

**§ 350.12 FEMA Headquarters review and approval.**

(a) Upon receipt from a Regional Director of a State plan, the Associate Director shall conduct such review of the State plan as he or she shall deem necessary. The Associate Director shall arrange for copies of the plan, together with the Regional Director's evaluation, to be made available to the members of the Federal Radiological Preparedness Coordinating Committee (FRPCC) and to other offices of FEMA with appropriate guidance relative to any assistance that may be needed in the FEMA review and approval process.

(b) If, after formal submission of the State plan and the Regional Director's evaluation, the Associate Director determines that the State plans and preparedness:

(1) Are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and

(2) Are capable of being implemented (e.g. adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy); the Associate Director shall approve in writing the State plan. The Associate Director shall concurrently communicate this FEMA approval to the Governor of the State(s) in question, the NRC and the pertinent Regional Director(s) and immediately shall publish in the FEDERAL REGISTER a notice of this effect.

(c) If, after formal submission of the State plan, the Associate Director is not satisfied with the adequacy of the plan or preparedness with respect to a particular site, he or she shall concurrently communicate that decision to

the Governor(s) of the State(s), the NRC and the pertinent Regional Director(s), together with a statement in writing explaining the reasons for the decision and requesting appropriate plan or preparedness revision. Such statement shall be transmitted to the Governor(s) through the appropriate Regional Director(s). The Associate Director shall immediately publish a notice to this effect in the FEDERAL REGISTER.

(d) The approval shall be of the State plan together with the local plans for each nuclear power facility (including out-of-State facilities) for which approval has been requested. FEMA may withhold approval of plans applicable to a specific nuclear power facility in a multi-facility State, but nevertheless approve the State plan and associated local plans applicable to other facilities in a State. Approval may be withheld for a specific site until plans for all jurisdictions within the emergency planning zones of that site have been reviewed and found adequate.

(e) Within 30 days after the date of notification of approval for a particular nuclear power facility or within 30 days of any statement of disapproval of a State plan, any interested person may appeal the decision of the Associate Director to the Director; however, such an appeal must be made solely upon the ground that the Associate Director's decision, based on the available record, was unsupported by substantial evidence. (See § 350.15 for appeal procedures.)

**§ 350.13 Withdrawal of approval.**

(a) If, at any time after granting approval of a State plan, the Associate Director determines, on his or her own initiative, motion or on the basis of information another person supplied, that the State or local plan is no longer adequate to protect public health and safety by providing reasonable assurance that appropriate protective measures can be taken, or is no longer capable of being implemented, he or she shall immediately advise the Governor of the affected State, through the appropriate Regional Director and the NRC of that initial determination

in writing. FEMA shall spell out in detail the reasons for its initial determination, and shall describe the deficiencies in the plan or the preparedness of the State. If, after four months from the date of such an initial determination, the State in question has not either:

(1) Corrected the deficiencies noted, or (2) submitted an acceptable plan for correcting those deficiencies, the Associate Director shall withdraw approval and shall immediately inform the NRC and the Governor of the affected State, of the determination to withdraw approval and shall publish in the FEDERAL REGISTER and the local newspaper having the largest daily circulation in the affected State notice of its withdrawal or approval. The basis upon which the Associate Director makes the determination for withdrawal of approval is the same basis used for reviewing plans and exercises, i.e., the planning standards and related criteria in NUREGO654/FEMA/REP-1, Rev. 1.

(b) In the event that the State in question shall submit a plan for correcting the deficiencies, the Associate Director shall negotiate a schedule and a timetable under which the State shall correct the deficiencies. If, on the agreed upon date, the deficiencies have been corrected, the Associate Director shall withdraw the initial determination and the approval previously granted shall remain valid. He or she shall inform the Governor(s), the NRC, the pertinent Regional Directors(s) and notify the public as stated in paragraph (a) of this section. If, however, on the agreed upon date, the deficiencies are not corrected, FEMA shall withdraw its approval and shall communicate its decision to the Governor of the State whose plan is in question, the NRC, the appropriate Federal agencies and notify the public as indicated above.

(c) Within 30 days after the date of notification of withdrawal of approval of a State or local plan, any interested person may appeal the decision of the Associate Director to the Director; however, such an appeal must be made solely upon the ground that the Associate Director's decision, based on the available record, was unsupported by substantial evidence. (See § 350.15 for appeal procedures.)

#### § 350.14 Amendments to State plans.

(a) The State may amend a plan submitted to FEMA for review and approval under § 350.7 at any time during the review process or may amend a plan at any time after FEMA approval has been granted under § 350.12. A State must amend its plan in order to extend the coverage of the plan to any new nuclear power facility which becomes operational after a FEMA approval or in case of any other significant change. The State plan shall remain in effect as approved while any significant change is under review.

(b) A significant change is one which involves the evaluation and assessment of a planning standard or which involves a matter which, if presented with the plan, would need to have been considered by the Associate Director in making a decision that State or local plans and preparedness are:

(1) Adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and

(2) Capable of being implemented.

(c) A significant change will be processed in the same manner as if it were an initial plan submission. However, the Regional Director may determine that certain procedures, such as holding a public meeting or a complete exercise, would be unnecessary. The existing FEMA approval shall remain in effect while any significant changes are under review.

(d) Changes, such as a change in a telephone number, that are not significant as defined in paragraphs (b) and (c) of this section, but are necessary to maintain currency of the plan, should be forwarded to the Regional Director.

#### § 350.15 Appeal procedures.

(a) Any interested person may appeal a decision made under §§ 350.12 and 350.13 of this part, by submitting to the Director, FEMA, a written notice of appeal, within 30 days after the appearance in the FEDERAL REGISTER, of the notice of decision relating to the matter being appealed. The appeal must be addressed to the Director, Federal Emergency Management Agency, 500 C

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Street, SW., Washington, DC, 20472. The appeal letter shall state specific reasons for the appeal and include an offer to provide documentation supporting appellate arguments.

(b) Upon receipt of an appeal, the Director or the Director's designee shall review the file, as submitted to the Associate Director, State and Local Programs and Support, by the Regional Director of the FEMA Region concerned, based on the information contained in the file and the appeal letter, with supporting documentation. The Director or the Director's designee shall decide whether or not the Associate Director's initial decision was supported by substantial evidence in the file and is consistent with FEMA policy.

(c) The decision of the Director or the Director's designee shall be published in the FEDERAL REGISTER as the final agency decision on the matter and shall not be reviewable within FEMA, except upon a showing that it was procured by fraud or misrepresentation. In addition to publication in the FEDERAL REGISTER, copies of the decision shall be forwarded to the appellant, the Governor(s) of the State(s) affected, the NRC and the affected licensee of the involved power facility.

**PART 351—RADIOLOGICAL EMERGENCY PLANNING AND PREPAREDNESS**

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AUTHORITY: 5 U.S.C. 552, Reorganization Plan No. 3 of 1978, E.O. 12127, E.O. 12148, E.O. 12241; Presidential Directive of Dec. 7, 1979.

SOURCE: 47 FR 10759, Mar. 11, 1982, unless otherwise noted.

**Subpart A—General**

**§ 351.1 Purpose.**

This part sets out Federal agency roles and assigns tasks regarding Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. Assignments in this part are applicable to radiological accidents at fixed nuclear facilities and transportation accidents involving radioactive materials.

**§ 351.2 Scope.**

The emergency planning and preparedness responsibilities covered by this part relate to consequences and activities which extend beyond the boundaries of any fixed nuclear facility with a potential for serious consequences and the area affected by a transportation accident involving radioactive materials.

**§ 351.3 Limitation of scope.**

(a) This part covers Federal agency assignments and responsibilities in connection with State and local emergency plans and preparedness measures. It does not set forth criteria used in the review and approval of these plans and does not include any of the requirements associated with FEMA findings and determinations on the adequacy of State and local government radiological emergency preparedness. FEMA has published a separate rule on procedures and criteria for reviewing and approving these plans and preparedness capabilities. Furthermore, this part does not set forth Federal agency responsibilities or capabilities for *responding to an accident* at a fixed nuclear facility or a transportation accident involving radioactive materials. These responsibilities are addressed in the “Federal Radiological

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Emergency Response Plan” (50 FR 46542, November 8, 1985).

(b) Nothing in this part authorizes access to or disclosure of classified information required to be protected in accordance with Federal law or regulation in the interest of national security.

[47 FR 10759, Mar. 11, 1982, as amended at 51 FR 34606, Sept. 30, 1986]

### Subpart B—Federal Radiological Preparedness Coordinating Committee and Regional Assistance Committees

#### § 351.10 Establishment of committees.

(a) The Federal Radiological Preparedness Coordinating Committee (FRPCC) consists of the Federal Emergency Management Agency, which chairs the Committee, Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, Department of Defense, United States Department of Agriculture, Department of Commerce and, where appropriate and on an ad hoc basis, other Federal departments and agencies. In chairing the committee, FEMA will be responsible for assuring that all agency assignments described in this rule are coordinated through the Committee and carried out with or on behalf of State and local governments.

(b) The Regional Assistance Committees (RACs), one in each of 10 standard Federal regions,<sup>1</sup> consist of a FEMA Regional Representative who chairs the Committee and representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, United States Department of Agriculture, Department of Commerce and other Federal departments and agencies such as the Department of Defense, as appropriate. The FEMA Chairperson of the

RACs will provide guidance and orientation to other agency members to assist them in carrying out their functions.

#### § 351.11 Functions of committees.

(a) The FRPCC shall assist FEMA in providing policy direction for the program of Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. The FRPCC will establish subcommittees to aid in carrying out its functions; e.g., research, training, emergency instrumentation, transportation, information, education and Federal response. The FRPCC will assist FEMA in resolving issues relating to granting of final FEMA approval of a State plan. The FRPCC will coordinate research and study efforts of its member agencies related to State and local government radiological emergency preparedness to assure minimum duplication and maximum benefits to State and local governments. The FRPCC will also assure that the research efforts of its member agencies are coordinated with the Interagency Radiation Research Committee.

(b) The RACs will assist State and local government officials in the development of their radiological emergency plans and will review these plans and observe exercises to evaluate adequacy of the plans. Each Federal agency member of the RACs will support the functions of these committees by becoming knowledgeable of Federal planning and guidance related to State and local radiological emergency plans, of their counterpart State organizations and personnel, where their agency can assist in improving the preparedness and by participating in RAC meetings.

### Subpart C—Interagency Assignments

#### § 351.20 The Federal Emergency Management Agency.

(a) Establish policy and provide leadership via the FRPCC in the coordination of all Federal assistance and guidance to State and local governments for developing, reviewing, assessing and testing the State and local radiological emergency plans.

<sup>1</sup>I (Boston); II (New York); III (Philadelphia); IV (Atlanta); V (Chicago); VI (Dallas); VII (Kansas City); VIII (Denver); IX (San Francisco) and X (Seattle).

(b) Issue guidance in cooperation with other Federal agencies concerning their responsibilities for providing radiological emergency planning and preparedness assistance to State and local governments.

(c) Foster cooperation of industry, technical societies, Federal agencies and other constituencies in the radiological emergency planning and preparedness of State and local governments.

(d) Develop and promulgate preparedness criteria and guidance to State and local governments, in coordination with other Federal agencies, for the preparation, review and testing of State and local radiological emergency plans.

(e) Provide assistance to State and local governments in the preparation, review and testing of radiological emergency plans.

(f) Assess, with the assistance of other Federal agencies, the adequacy of State and local government emergency plans and the capability of the State and local government officials to implement them (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications) and report the findings and determinations to NRC.

(g) Review and approve State radiological emergency plans and preparedness in accordance with FEMA procedures in 44 CFR part 350.

(h) Develop, implement and maintain a program of public education and information to support State and local radiological emergency plans and preparedness.

(i) Develop and manage a radiological emergency response training program to meet State and local needs, using technical expertise and resources of other involved agencies. Develop and field test exercise materials and coordinate the Federal assistance required by States and localities in conducting exercises, including guidance for Federal observers.

(j) Develop, with NRC and other Federal Agencies, representative scenarios from which NRC licensed facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(k) Issue guidance for establishment of State and local emergency instrumentation systems for radiation detection and measurement.

(l) Provide guidance and assistance, in coordination with NRC and HHS, to State and local governments concerning the storage and distribution of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs as a result of radiological emergencies.

**§ 351.21 The Nuclear Regulatory Commission.**

(a) Assess NRC nuclear facility (e.g., commercial power plants, fuel processing centers and research reactors) licensee emergency plans for adequacy to protect the health and safety of the public.

(b) Verify that nuclear facility licensee emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(c) Review FEMA's findings and determinations of State and local radiological emergency plans for areas surrounding NRC licensed nuclear facilities.

(d) Take into account the overall state of emergency preparedness in making decisions to issue operating licenses or shut down licensed operating reactors, including the integration of assessments of emergency preparedness onsite by the NRC and offsite by FEMA.

(e) Where not already established, determine, in cooperation with other Federal agencies, the appropriate planning bases for NRC licensed nuclear facilities including distances, times and radiological characteristics.

(f) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(g) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

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(h) Assist FEMA and DOT in the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency plans.

(i) Provide representation to and support for the FRPCC and the RACs.

(j) Assist FEMA in the development, implementation and maintenance of public information and education programs.

(k) Assist FEMA with other Federal agencies in the development of representative scenarios from which nuclear facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(l) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(m) Assist FEMA with the development, implementation and presentation to the extent that resources permit of training programs for Federal, State and local radiological emergency preparedness personnel.

(n) Assist FEMA in providing guidance and assistance to State and local governments concerning the storage and distribution of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs as a result of radiological emergencies.

### § 351.22 The Environmental Protection Agency.

(a) Establish Protective Action Guides (PAGs) for all aspects of radiological emergency planning in coordination with appropriate Federal agencies.

(b) Prepare guidance for State and local governments on implementing PAGs, including recommendations on protective actions which can be taken to mitigate the potential radiation dose to the population. This guidance will be presented in the Environmental Protection Agency (EPA) "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents." (The preparation of PAGs related to human food and animal feed will be done in coordination with the Depart-

ment of Health and Human Services (HHS)/Food and Drug Administration.)

(c) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of technical training for State and local officials regarding PAGs and protective actions, radiation dose assessment and decisionmaking.

(e) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(f) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(g) Provide representation to and support for the FRPCC and the RACs.

(h) Assist FEMA in developing representative scenarios from which nuclear facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(i) Assist FEMA in the development, implementation and maintenance of public information and education programs.

### § 351.23 The Department of Health and Human Services.

(a) Develop and specify protective actions and associated guidance to State and local governments for human food and animal feed (in cooperation with the Environmental Protection Agency).

(b) Provide guidance and assistance to State and local governments in preparing programs related to mental health, behavioral disturbances and epidemiology associated with radiological emergencies.

(c) Assist FEMA in the development, implementation and maintenance of public information and education programs to support State and local government radiological emergency plans and preparedness.



(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of a radiological emergency training program to support State and local government personnel in accident assessment, protective actions and decisionmaking.

(e) Develop and assist in providing the requisite training programs for State and local health, mental health and social service agencies.

(f) Provide guidance to State and local governments on the use of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs including dosage and projected radiation exposures at which such drugs should be used.

(g) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(h) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(i) Provide representation to and support for the FRPCC and the RACs.

(j) Assist FEMA in developing representative scenarios from which nuclear facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(k) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(l) Assist, in cooperation with the United States Department of Agriculture (USDA), the State and local governments in the planning for the safe production, during radiological emergencies, of human food and animal feed in the emergency planning zones around fixed nuclear facilities.

(m) Assist FEMA, through the Interagency Radiation Research Committee, chaired by the Department of Health and Human Services, in the coordination of Federal research efforts, primarily in areas related to the bioeffects of radiation, applicable to State and local plans and preparedness.

**§ 351.24 The Department of Energy.**

(a) Determine the appropriate planning bases for the Department of Energy (DOE) owned and contractor operated nuclear facilities (e.g., research and weapon production facilities) including distances, time and radiological characteristics.

(b) Assess DOE nuclear facility emergency plans for adequacy in contributing to the health and safety of the public.

(c) Verify that DOE nuclear facility emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(d) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the preparation of those portions of their radiological emergency plans related to DOE owned and contractor operated nuclear facilities and radioactive materials in transit.

(e) Review and assess FEMA's findings and determinations on the adequacy of and capability to implement State and local radiological emergency plans for areas surrounding DOE nuclear facilities. Make independent assessments of the overall State of plans and preparedness.

(f) Serve as the lead agency for coordinating the development and issuance of interagency instructions and guidance to implement the Federal Radiological Monitoring and Assessment Plan (FRMAP), which will replace the Interagency Radiological Assistance Plan. The FRMAP provides the framework through which participating Federal agencies will coordinate their emergency radiological monitoring and assessment activities with those of State and local governments.

(g) Develop, maintain and improve capability to detect and assess hazardous levels of radiation.

(h) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(i) Assist FEMA with the development, implementation and presentation to the extent that resources permit of training programs for Federal,

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State and local radiological emergency response personnel.

(j) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(k) Develop, with FEMA, representative scenarios from which DOE facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(l) Provide representation to and support for the FRPCC and the RACs.

(m) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

### § 351.25 The Department of Transportation.

(a) Assist FEMA, along with NRC, in the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency plans.

(b) Assist FEMA in its review and approval of State and local radiological emergency plans and in the evaluation of exercises to test such plans.

(c) Provide guidance and materials for use in training emergency services and other response personnel for transportation accidents involving radioactive materials and participate in interagency planning for such training.

(d) Provide representation to and support for the FRPCC and the RACs.

### § 351.26 The United States Department of Agriculture.

(a) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(b) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and reviewing and evaluating the plans and preparedness.

(c) Assist State and local governments in preparing to implement protective actions in food ingestion path-

way emergency planning zones around fixed nuclear facilities.

(d) Develop, in coordination with FEMA, the HHS and other Federal agencies, guidance for assisting State and local governments in the production, processing and distribution of food resources under radiological emergency conditions.

(e) Assist FEMA with the development, implementation and presentation to the extent that resources permit of training programs of Federal, State and local radiological emergency personnel.

(f) Provide representation to and support for the FRPCC and the RACs.

### § 351.27 The Department of Defense.

(a) Determine appropriate planning bases for Department of Defense (DOD) nuclear facilities and installations (e.g., missile bases, nuclear submarine facilities and weapon storage sites) including distances, time and radiological characteristics.

(b) Develop, with FEMA, representative scenarios from which DOD nuclear facility commanders and State and local governments may select for use in testing and exercising radiological emergency plans.

(c) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the development, review and assessment of those portions of their radiological emergency plans related to DOD nuclear facilities and assist State officials with planning for response to accidents involving DOD controlled radioactive materials in transit.

(d) Provide representation to and support for the FRPCC and the RACs when appropriate.

### § 351.28 The Department of Commerce.

(a) Assist State and local governments in determining their requirements for meteorological and hydrological services for radiological emergencies and assist State and local governments in preparing to meet these requirements within the limits of available resources.

(b) Assist FEMA in developing and promulgating guidance to State and

local governments for the preparation of radiological emergency plans.

(c) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of technical training for State and local officials in the use of meteorological information in responding to radiological emergencies.

(e) Provide representation to and support for the FRPCC and the RACs.

(f) Assist FEMA in the development of guidance for State and local governments on the exposure and location of emergency instrumentation systems for radiation detection and measurement.

(g) The Federal Coordinator for Meteorological Services and Supporting Research will, consistent with the provisions of the Office of Management and Budget Circular A-62, serve as the coordinating agent for any multi-agency meteorological aspects of assisting State and local governments in their radiological emergency planning and preparedness.

## **PART 352—COMMERCIAL NUCLEAR POWER PLANTS: EMERGENCY PREPAREDNESS PLANNING**

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352.28 Reimbursement.

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**AUTHORITY:** Federal Civil Defense Act of 1950, as amended (50 U.S.C. app. 2251 *et seq.*); Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; 31 U.S.C. 9701; Executive Order 12657; Executive Order 12148; Executive Order 12127 and Executive Order 12241.

**SOURCE:** 54 FR 31925, Aug. 2, 1989, unless otherwise noted.

### **§ 352.1 Definitions.**

As used in this part, the following terms and concepts are defined:

(a) *Associate Director* means the Associate Director, State and Local Programs and Support, FEMA or designee.

(b) *Director* means the Director, FEMA or designee.

(c) *EPZ* means Emergency Planning Zone.

(d) *FEMA* means the Federal Emergency Management Agency.

(e) *NRC* means the Nuclear Regulatory Commission.

(f) *Regional Director* means the Regional Director of FEMA or designee.

(g) *Local government* means boroughs, cities, counties, municipalities, parishes, towns, townships or other local jurisdictions within the plume and ingestion exposure pathway EPZs that have specific roles in emergency planning and preparedness.

(h) *Decline or fail* means a situation where State or local governments do not participate in preparing offsite emergency plans or have significant planning or preparedness inadequacies and have not demonstrated the commitment or capabilities to correct those inadequacies in a timely manner so as to satisfy NRC licensing requirements.

(i) *Governor* means the Governor of a State or his/her designee.

(j) *Certification* means the written justification by a licensee of the need for Federal compensatory assistance.

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This certification is required to activate the Federal assistance under this part.

(k) *Responsible local official* means the highest elected official of an appropriate local government.

(l) *Technical assistance* means services provided by FEMA and other Federal agencies to facilitate offsite radiological emergency planning and preparedness such as: Provision of support for the preparation off site radiological emergency response plans and procedures; FEMA coordination of services from other Federal agencies; provision and interpretation of Federal guidance; provision of Federal and contract personnel to offer advice and recommendations for specific aspects of preparedness such as alert and notification and emergency public information.

(m) *Federal facilities and resources* means personnel, property (land, buildings, vehicles, equipment), and operational capabilities controlled by the Federal government related to establishing and maintaining radiological emergency response preparedness.

(n) *Licensee* means the utility which has applied for or has received a license from the NRC to operate a commercial nuclear power plant.

(o) *Reimbursement* means the payment to FEMA/Federal agencies, jointly or severally, by a licensee and State and local governments for assistance and services provided in processing certifications and implementing Federal compensatory assistance under this part 352.

(p) *Host FEMA Regional Office* means the FEMA Regional Office that has primary jurisdiction by virtue of the nuclear power plant being located within its geographic boundaries.

(q) *Command and control* means making and issuing protective action decisions and directing offsite emergency response resources, agencies, and activities.

### § 352.2 Scope, purpose and applicability.

(a) This part applies whenever State or local governments, either individually or together, decline or fail to prepare commercial nuclear power plant offsite radiological emergency pre-

paredness plans that are sufficient to satisfy NRC licensing requirements or to participate adequately in the preparation, demonstration, testing, exercise, or use of such plans. In order to request the assistance provided for in this part, an affected nuclear power plant applicant or licensee shall certify in writing to FEMA that the above situation exists.

(b) The purposes of this part are as follows: (1) To establish policies and procedures for the submission of a licensee certification for Federal assistance under Executive Order 12657; (2) set forth policies and procedures for FEMA's determination to accept, accept with modification, or reject the licensee certification; (3) establish a framework for providing Federal assistance to licensees; and (4) provide procedures for the review and evaluation of the adequacy of offsite radiological emergency planning and preparedness. Findings and determinations on offsite planning and preparedness made under this part are provided to the NRC for its use in the licensing process.

(c) This part applies only in instances where Executive Order 12657 is used by a licensee and its provisions do not affect the validity of the emergency preparedness developed by the licensee independent of or prior to Executive Order 12657.

## Subpart A—Certifications and Determinations

### § 352.3 Purpose and scope.

This subpart establishes policies and procedures for submission by a commercial nuclear power plant licensee of a certification for Federal assistance under Executive Order 12657. It contains policies and procedures for FEMA's determinations, with respect to a certification. It establishes a framework for providing Federal assistance to licensees. It also provides procedures for review and evaluation of the adequacy of licensee offsite radiological emergency planning and preparedness.

### § 352.4 Licensee certification.

(a) A licensee which seeks Federal assistance under this part shall submit a

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certification to the host FEMA Region Director that a decline or fail situation exists. The certification shall be in the form of a letter from the chief executive officer of the licensee. The contents of this letter shall address the provisions set forth in paragraphs (b) and (c) of this section.

(b) The licensee certification shall delineate why such assistance is needed based on the criteria of decline or fail for the relevant State or local governments.

(c) The licensee certification shall document requests to and responses from the Governor(s) or responsible local official(s) with respect to the efforts taken by the licensee to secure their participation, cooperation, commitment of resources or timely correction of planning and preparedness failures.

(Approved by the Office of Management and Budget (OMB) under control number 3067-0201)

### **§ 352.5 FEMA action on licensee certification.**

(a) Upon receiving a licensee certification, the host Regional Director shall immediately notify FEMA Headquarters of the licensee certification. Within 5 days the host Regional Director shall notify the Governor of an affected State and the chief executive officer of any local government that a certification has been received, and make a copy of the certification available to such persons. Within 10 days, the host Regional Director shall acknowledge in writing the receipt of the certification to the licensee.

(b) Within 15 days of receipt of the certification, the Regional Director shall publish a notice in the FEDERAL REGISTER that a certification from the licensee has been received, and that copies are available at the Regional Office for review and copying in accordance with 44 CFR 5.26.

(c) FEMA Headquarters shall notify the NRC of receipt of the certification and shall request advice from the NRC on whether a decline or fail situation exists.

(d) State and local governments may submit written statements to the host Regional Director outlining their position as to the facts stated in the letter

of certification. Such statements shall be submitted to FEMA within 10 days of the date of notification provided to State and local government under § 352.5(a). Any such statements shall be a part of the record and will be considered in arriving at recommendations or determinations made under the provisions of this part.

(e) The host FEMA Regional Office shall provide, after consulting with State and responsible local officials, a recommended determination on whether a decline or fail situation exists to the FEMA Associate Director within 30 days of receipt of the licensee certification.

(f) The FEMA Associate Director shall make a determination on whether a decline or fail situation exists within 45 days of receipt of the licensee certification and shall advise the licensee, NRC, and State and local officials.

(g) The times for actions set out above may be extended up to an aggregate of 30 days by the host Regional Director or Associate Director, as appropriate.

### **§ 352.6 FEMA determination on the commitment of Federal facilities and resources.**

(a) A licensee request for Federal facilities and resources shall document the licensee's maximum feasible use of its resources and its efforts to secure the use of State and local government and volunteer resources.

(b) Upon a licensee request for Federal facilities and resources, FEMA headquarters shall notify NRC and request advice from the NRC as to whether the licensee has made maximum use of its resources and the extent to which the licensee has complied with 10 CFR 50.47(c)(1). The host FEMA Regional Director shall make a recommendation to the FEMA Associate Director on whether the provision of these facilities and resources is warranted. The FEMA Associate Director shall make a final determination as to whether Federal facilities and resources are needed.

(c) In making the determination under paragraph (b) of this section, FEMA:

(1) Shall work actively with the licensee, and before relying upon any

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Federal resources, shall make maximum feasible use of the licensee's own resources, which may include agreements with volunteer organizations and other government entities and agencies; and

(2) Shall assume that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public and would act generally in conformity with the licensee's radiological emergency preparedness plan.

(d) The FEMA Associate Director shall make a determination on the need for and commitment of Federal facilities and resources. The FEMA determination shall be made in consultation with affected Federal agencies and in accordance with 44 CFR 352.21. FEMA shall inform the licensee, the States and affected local governments in writing of the Federal support which will be provided. This information shall identify Federal agencies that are to provide Federal support, the extent and purpose of the support to be provided, the Federal facilities and resources to be committed and the limitations on their use. The provision of the identified Federal support shall be made under the policies and procedures of subpart B of this part.

### § 352.7 Review and evaluation.

FEMA shall conduct its activities and make findings under this part in a manner consistent with 44 CFR part 350 to the extent that those procedures are appropriate and not inconsistent with the intent and procedures required by E.O. 12657. This Order shall take precedence, and any inconsistencies shall be resolved under the procedures in the NRC/FEMA Memorandum of Understanding (MOU) on planning and preparedness. (50 FR 15485, April 18, 1985)

### Subpart B—Federal Participation

#### § 352.20 Purpose and scope.

This subpart establishes policy and procedures for providing support for offsite radiological emergency planning and preparedness in a situation where Federal support under Executive

Order 12657 (E.O. 12657) has been requested. This subpart:

(a) Describes the process for providing Federal technical assistance to the licensee for developing its offsite emergency response plan after an affirmative determination on the licensee certification under subpart A (44 CFR 352.5(f));

(b) Describes the process for providing Federal facilities and resources to the licensee after a determination under subpart A (44 CFR 352.6(d)) that Federal resources are required;

(c) Describes the principal response functions which Federal agencies may be called upon to provide;

(d) Describes the process for allocating responsibilities among Federal agencies for planning site-specific emergency response functions; and

(e) Provides for the participation of Federal agencies, including the members of the FRPCC and the RACs.

#### § 352.21 Participating Federal agencies.

(a) FEMA may call upon any Federal agency to participate in planning for the use of Federal facilities and resources in the licensee offsite emergency response plan.

(b) FEMA may call upon the following agencies, and others as needed, to provide Federal technical assistance and Federal facilities and resources:

- (1) Department of Commerce;
- (2) Department of Defense;
- (3) Department of Energy;
- (4) Department of Health and Human Services;
- (5) Department of Housing and Urban Development;
- (6) Department of the Interior;
- (7) Department of Transportation;
- (8) Environmental Protection Agency;
- (9) Federal Communications Commission;
- (10) General Services Administration;
- (11) National Communications System;
- (12) Nuclear Regulatory Commission;
- (13) United States Department of Agriculture; and
- (14) Department of Veterans Affairs.

(c) FEMA is the Federal agency primarily responsible for coordinating Federal assistance. FEMA may enter

into Memorandums of Understanding (MOU) and other instruments with Federal agencies to provide technical assistance and to arrange for the commitment and utilization of Federal facilities and resources as necessary. FEMA also may use a MOU to delegate to another Federal agency, with the consent of that agency, any of the functions and duties assigned to FEMA. Following review and approval by OMB, FEMA will publish such documents in the FEDERAL REGISTER.

**§ 352.22 Functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC).**

Under 44 CFR part 351, the role of the FRPCC is to assist FEMA in providing policy direction for the program of technical assistance to State and local governments in their radiological emergency planning and preparedness activities. Under this subpart, the role of the FRPCC is to provide advice to FEMA regarding Federal assistance and Federal facilities and resources for implementing subparts A and B of this part. This assistance activity is extended to licensees. The FRPCC will assist FEMA in revising the Federal Radiological Emergency Response Plan (FRERP).

**§ 352.23 Functions of a Regional Assistance Committee (RAC).**

(a) Under 44 CFR part 351, the role of a RAC is to assist State and local government officials to develop their radiological emergency plans, to review the plans, and to observe exercises to evaluate the plans. Under subparts A and B of this part, these technical assistance activities are extended to the licensee.

(b) Prior to a determination under subpart A (44 CFR 352.6(d)) that Federal facilities and resources are needed, the designated RAC for the specific site will assist the licensee, as necessary, in evaluating the need for Federal facilities and resources, in addition to providing technical assistance under § 352.23(a).

(c) In accomplishing the foregoing, the RAC will use the standards and evaluation criteria in NUREG-0654/

FEMA-REP-1, Rev. 1 and Supp. 1.<sup>1</sup> or approved alternative approaches, and RAC members shall render such technical assistance as appropriate to their agency mission and expertise.

(d) Following determination under subpart A (44 CFR 352.6(d)) that Federal facilities and resources are needed, the RAC will assist FEMA in identifying agencies and specifying the Federal facilities and resources which the agencies are to provide.

**§ 352.24 Provision of technical assistance and Federal facilities and resources.**

(a) Under a determination under subpart A (44 CFR 352.5(f) and 352.4(e)) that a decline or fail situation exists, FEMA and other Federal agencies will provide technical assistance to the licensee. Such assistance may be provided during the pendency of an appeal under § 352.29.

(b) The applicable criteria for the use of Federal facilities and resources are set forth in subpart A (44 CFR 352.6(c)(1)(2)). Upon a determination under subpart A (44 CFR 352.6(d)) that Federal resources or facilities will be required, FEMA will consult with the FRPCC, the RAC, the individual Federal agencies, and the licensee, to determine the extent of Federal facilities and resources that the government could provide, and the most effective way to do so. After such consultation, FEMA will specifically request Federal agencies to provide those Federal facilities and resources. The Federal agencies, in turn, will respond to confirm the availability of such facilities and resources and provide estimates of their costs.

(c) FEMA will inform the licensee in writing of the Federal support which will be provided. This information will identify Federal agencies which are to be included in the plan, the extent and purpose of technical assistance to be provided and the Federal facilities and resources to be committed, and the limitations of their use. The information will also describe the requirements for reimbursement to the Federal Government for this support.

<sup>1</sup>Copy available from FEMA Distribution Center, P.O. Box 70274 Washington, DC 20024

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(d) FEMA will coordinate the Federal effort in implementing the determinations made under subpart A (44 CFR 352.5(f) and 352.6(d)) so that each Federal agency maintains the committed technical assistance, facilities, and resources after the licensee offsite emergency response plan is completed. FEMA and other Federal agencies will participate in training, exercises, and drills, in support of the licensee offsite emergency response plan.

(e) In carrying out paragraphs (a) through (c) of this section, FEMA will keep affected State and local governments informed of actions taken.

(Approval by the OMB under control number 3067-0201)

### **§ 352.25 Limitation on committing Federal facilities and resources for emergency preparedness.**

(a) The commitment of Federal facilities and resources will be made through the authority of the affected Federal agencies.

(b) In implementing a determination under subpart A (44 CFR 352.6(d)), that Federal facilities and resources are necessary for emergency preparedness, FEMA shall take care not to supplant State and local resources. Federal facilities and resources shall be substituted for those of the State and local governments in the licensee offsite emergency response plan only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after consultation with the Governor(s) and responsible local officials in the affected area(s) regarding State and local participation.

(c) All Federal planning activities described in this subpart will be conducted under the assumption that, in the event of an actual radiological emergency or disaster, State and local authorities would contribute their full resources and exercise their authorities in accordance with their duties to protect the public from harm and would act, generally, in conformity with the licensee's offsite emergency response plan.

### **§ 352.26 Arrangements for Federal response in the licensee offsite emergency response plan.**

Federal agencies may be called upon to assist the licensee in developing a licensee offsite emergency response plan in areas such as:

(a) Arrangements for use of Federal facilities and resources for response functions such as:

(1) Prompt notification of the emergency to the public;

(2) Assisting in any necessary evacuation;

(3) Providing reception centers or shelters and related facilities and services for evacuees;

(4) Providing emergency medical services at Federal hospitals; and

(5) Ensuring the creation and maintenance of channels of communication from commercial nuclear power plant licensees to State and local governments and to surrounding members of the public.

(b) Arrangements for transferring response functions to State and local governments during the response in an actual emergency; and

(c) Arrangements which may be necessary for FEMA coordination of the response of other Federal agencies.

### **§ 352.27 Federal role in the emergency response.**

In addition to the Federal component of the licensee offsite emergency response plan described in subpart B (§ 352.26), and after complying with E.O. 12657, Section 2(b)(2), which states that FEMA:

(2) Shall take care not to supplant State and local resources and that FEMA shall substitute its own resources for those of State and local governments only to the extent necessary to compensate for the nonparticipation or inadequate participation of those governments, and only as a last resort after appropriate consultation with the Governors and responsible local officials in the affected area regarding State and local participation;

FEMA shall provide for initial Federal response activities, including command and control of the offsite response, as may be needed. Any Federal response role, undertaken pursuant to this section, shall be transferred to State and



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local governments as soon as feasible after the onset of an actual emergency.

### § 352.28 Reimbursement.

In accordance with Executive Order 12657, Section 6(d), and to the extent permitted by law, FEMA will coordinate full reimbursement, either jointly or severally, to the agencies performing services or furnishing resources, from any affected licensee and from any affected nonparticipating or inadequately participating State or local government.

### § 352.29 Appeal process.

(a) Any interested party may appeal a determination made by the Associate Director, under §§ 352.5 and 352.6 of this part, by submitting to the Director, FEMA, a written notice of appeal, within 30 days after issuance. The appeal is to be addressed to the Director, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. The appeal letter shall state the specific reasons for the appeal and include documentation to support appellant arguments. The appeal is limited to matters of record under §§ 352.5 and 352.6.

(b) Within 30 days of receipt of this letter, the FEMA Director or designee will review the record and make a final determination on the matter.

(c) Copies of this determination shall be furnished to the Appellant, the State(s), affected local governments, and the NRC.

(d) For purposes of this section, the term *interested party* means only a licensee, a State or a local government, as defined in § 352.1(g).

## PART 353—FEE FOR SERVICES IN SUPPORT, REVIEW AND APPROVAL OF STATE AND LOCAL GOVERNMENT OR LICENSEE RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

Sec.

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353.5 Average cost per FEMA professional staff-hour.

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353.7 Failure to pay.

APPENDIX A TO PART 353—MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL EMERGENCY MANAGEMENT AGENCY AND NUCLEAR REGULATORY COMMISSION

AUTHORITY: 31 U.S.C. 9701; E.O. 12657 of Nov. 18, 1988; 3 CFR, 1988 Comp., p. 611; 50 U.S.C. app. 2251 note; E.O. 12148 of July 20, 1979; 3 CFR, 1979 Comp., p. 412, 50 U.S.C. app. 2251 note.

SOURCE: 56 FR 9455, March 6, 1991, unless otherwise noted.

### § 353.1 Purpose.

This part sets out fees charged for site-specific radiological emergency planning and preparedness services rendered by the Federal Emergency Management Agency, as authorized by 31 U.S.C. 9701.

### § 353.2 Scope.

The regulation in this part applies to all licensees who have applied for or have received a license from the Nuclear Regulatory Commission to operate a commercial nuclear power plant.

### § 353.3 Definitions.

As used in this part, the following terms and concepts are defined:

(a) *FEMA* means the Federal Emergency Management Agency.

(b) *NRC* means the Nuclear Regulatory Commission.

(c) *Certification* means the written justification by a licensee of the need for Federal compensatory assistance, as authorized in 44 CFR part 352 and E.O. 12657.

(d) *Technical assistance* means services provided by FEMA to facilitate offsite radiological emergency planning and preparedness such as provision of support for the preparation of offsite radiological emergency response plans and procedures; provision of advice and recommendations for specific aspects of preparedness such as alert and notification and emergency public information.

(e) *Licensee* means the utility which has applied for or has received a license from the NRC to operate a commercial nuclear power plant.

(f) *Governor* means the Governor of a State or his/her designee.

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(g) *RAC* means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce and other Federal Departments and agencies as appropriate.

(h) *REP* means FEMA's Radiological Emergency Preparedness Program.

(i) *Fiscal Year* means Federal fiscal year commencing on the first day of October through the thirtieth day of September.

(j) *Federal Radiological Preparedness Coordinating Committee* is the national level committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Interior, Department of Energy, Department of Transportation, United States Department of Agriculture, Department of Commerce and other Federal Departments and agencies as appropriate.

### § 353.4 Payment of fees.

Fees for site-specific offsite radiological emergency plans and preparedness services and related site-specific legal services are payable upon notification by FEMA. FEMA services will be billed at 6-month intervals for all accumulated costs on a site-specific basis. Each bill will identify the costs related to services for each nuclear power plant site.

### § 353.5 Average cost per FEMA professional staff-hour.

Fees for FEMA services rendered will be calculated based upon the costs for such services using a professional staff rate per hour equivalent to the sum of the average cost to the agency of maintaining a professional staff member performing site-specific services related to the Radiological Emergency Preparedness Program, including salary, benefits, administrative support, travel and overhead. This rate will be charged when FEMA performs such services as: Development of exercise objectives and scenarios, pre-exercise

logistics, exercise conduct and participation, evaluation, meetings and reports; review and approval of Plan revisions that are utility-requested or exercise inadequacy related; remedial exercise, medical drill or any other exercise or drill upon which a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports; the issuance of interim findings pursuant to the FEMA/NRC Memorandum of Understanding (MOU) (App. A of this part); review of utility plan submissions through the NRC under the MOU; utility certification submission review under 44 CFR part 352 and follow-on activities; site-specific adjudicatory proceedings and any other site-specific legal costs and technical assistance that is utility requested or exercise inadequacy related. The professional staff rate for FY 91 is \$39.00 per hour. The referenced FEMA/NRC MOU is provided in this rule as appendix A. The professional staff rate for the REP Program and related legal services will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be published as a notice in the FEDERAL REGISTER for each fiscal year if the rate increases or decreases.

### § 353.6 Schedule of services.

Recipients shall be charged the full cost of site-specific services based upon the appropriate professional hourly staff rate for the FEMA services described in this Section and for related contractual services which will be charged to the licensee by FEMA, at the rate and cost incurred.

(a) When a State seeks formal review and approval by FEMA of the State's radiological emergency response plan pursuant to 44 CFR part 350 (Review and Approval Process of State and Local Radiological Emergency Plans and Preparedness), FEMA shall provide the services as described in 44 CFR part 350 in regard to that request and fees will be charged for such services to the licensee, which is the ultimate beneficiary of FEMA services. This provision does not apply where an operating license has been granted or the application denied or withdrawn, except as necessary to support biennial exercises

### § 353.7

and related activities. Fees will be charged for all FEMA, but not other Federal agency activities related to such services, including but not limited to the following:

(1) Development of exercise objectives and scenarios, preexercise logistics, exercise conduct and participation, evaluation, meetings and reports.

(2) Review of plan revisions that are exercise-inadequacy related;

(3) Technical assistance that is exercise-inadequacy related;

(4) Remedial exercise, medical drill, or any other exercise or drill upon which maintenance of a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports.

(b) Interim findings. Where the NRC seeks from FEMA under the FEMA/NRC MOU an interim finding of the status of radiological emergency planning and preparedness at a particular time for a nuclear power plant, FEMA shall assess a fee to the licensee for providing this service. The provision of this service consists of making a determination whether the plans are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken off-site in the event of a radiological emergency and that such plans are capable of being implemented.

(c) NRC utility plan submissions. Fees will be charged for all FEMA but not other Federal agency activities related to such services, including but not limited to the following:

(1) Development of exercise objectives and scenarios, preexercise logistics, exercise conduct and participation, evaluation and post-exercise meetings and reports.

(2) Notice and conduct of public meeting.

(3) Regional finding and determination of adequacy of plans and preparedness followed by review by FEMA Headquarters resulting in final FEMA determination of adequacy of plans and preparedness.

(4) Remedial exercise, medical drill, or any other exercise or drill upon which maintenance of a license is predicated, with regard to preparation,

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review, conduct, participation, evaluation, meetings and reports.

(d) Utility certification submission review. When a licensee seeks Federal assistance within the framework of 44 CFR part 352 due to the decline or failure of a State or local government to adequately prepare an emergency plan, FEMA shall process the licensee's certification and make the determination whether a decline or fail situation exists. Fees will be charged for services rendered in making the determination. Upon the determination that a decline or fail situation does exist, any services provided or secured by FEMA consisting of assistance to the licensee, as described in 44 CFR part 352, will have a fee charged for such services.

(e) FEMA participation in site-specific NRC adjudicatory proceedings and any other site-specific legal costs. Where FEMA participates in NRC licensing proceedings and any related court actions to support FEMA findings as a result of its review and approval of offsite emergency plans and preparedness, or provides legal support for any other site specific FEMA activities comprised in this rule, fees will be charged to the licensee for such participation.

(f) Rendering technical assistance. Where FEMA is requested by a licensee to provide any technical assistance, or where a State or local government requests technical assistance in order to correct an inadequacy identified as a result of a biennial exercise or any other drill or exercise upon which maintenance of a license is predicated, FEMA will charge such assistance to the licensee for the provision of such service.

### § 353.7 Failure to pay.

In any case where there is a dispute over the FEMA bill or where FEMA finds that a licensee has failed to pay a prescribed fee required under this part, procedures will be implemented in accordance with 44 CFR part 11 subpart C to effectuate collections under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*).

## APPENDIX A TO PART 353—MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL EMERGENCY MANAGEMENT AGENCY AND NUCLEAR REGULATORY COMMISSION

The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating To Radiological Emergency Planning and Preparedness. This supersedes a memorandum entered into on November 1, 1980 (published December 16, 1980, 45 FR 82713), revised April 9, 1985 (published April 18, 1985, 50 FR 15485), and published as Appendix A to 44 CFR part 353. The substantive changes in the new MOU are: (1) Self-initiated review by the NRC; (2) Early Site Permit process; (3) adoption of FEMA exercise time-frames; (4) incorporation of FEMA definition of exercise deficiency; (5) NRC commitment to work with licensees in support of State and local governments to correct exercise deficiencies; (6) correlation of FEMA actions on withdrawal of approvals under 44 CFR part 350 and NRC enforcement actions; and (7) disaster-initiated reviews in situations that affect offsite emergency infrastructures. The text of the MOU follows.

## MEMORANDUM OF UNDERSTANDING BETWEEN NRC AND FEMA RELATING TO RADIOLOGICAL EMERGENCY PLANNING AND PREPAREDNESS

*I. Background and Purposes*

This Memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors and fuel cycle facilities which are subject to 10 CFR part 50, appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental offsite radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in offsite planning and response, his request that NRC assist FEMA in carrying out this role, and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

On January 14, 1980, the two agencies entered into a "Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in Radiological Emergency Preparedness," that was responsive to the President's December 7, 1979, statement. A revised and updated Memorandum of Un-

derstanding became effective November 1, 1980. The MOU was further revised and updated on April 9, 1985. This MOU is a further revision to reflect the evolving relationship between NRC and FEMA and the experience gained in carrying out the provisions of the previous MOU's. This MOU supersedes these two earlier versions of the MOU.

The general principles agreed to in the previous MOU's and reaffirmed in this MOU, are as follows: FEMA coordinates all Federal planning for the offsite impact of radiological emergencies and takes the lead for assessing offsite radiological emergency response plans<sup>1</sup> and preparedness, makes findings and determinations as to the adequacy and capability of implementing offsite plans, and communicates those findings and determinations to the NRC. The NRC reviews those FEMA findings and determinations in conjunction with the NRC onsite findings for the purpose of making determinations on the overall state of emergency preparedness. These overall findings and determinations are used by NRC to make radiological health and safety decisions in the issuance of licenses and the continued operation of licensed plants to include taking enforcement actions as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC staff in offsite preparedness matters. However, if FEMA informs the NRC that an emergency, unforeseen contingency, or other reason would prevent FEMA from providing a requested finding in a reasonable time, then, in consultation with FEMA, the NRC might initiate its own review of offsite emergency preparedness.

A separate MOU dated October 22, 1980, deals with NRC/FEMA cooperation and responsibilities in response to an actual or potential radiological emergency. Operations Response Procedures have been developed that implement the provisions of the Incident Response MOU. These documents are intended to be consistent with the Federal Radiological Emergency Response Plan which describes the relationships, roles, and responsibilities of Federal Agencies for responding to accidents involving peacetime nuclear emergencies. On December 1, 1991, the NRC and FEMA also concluded a separate MOU in support of Executive Order 12657 (FEMA Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants).

<sup>1</sup> Assessments of offsite plans may be based on State and local government plans submitted to FEMA under its rule (44 CFR Part 350), and as noted in 44 CFR 350.3(f), may also be based on plans currently available to FEMA or furnished to FEMA through the NRC/FEMA Steering Committee.

## II. Authorities and Responsibilities

FEMA-Executive Order 12148 charges the Director, FEMA, with the responsibility to “\* \* \* establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies” (Section 2-101) and “\* \* \* represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs” (Section 2-104.).

On December 7, 1979, the President, in response to the recommendations of the Kemeny Commission on the Accident at Three Mile Island, directed that FEMA assume lead responsibility for all offsite nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to radiological emergency preparedness as they relate to NRC are:

1. To take the lead in offsite emergency planning and to review and assess offsite emergency plans and preparedness for adequacy.
2. To make findings and determinations as to whether offsite emergency plans are adequate and can be implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment). Notwithstanding the procedures which are set forth in 44 CFR part 350 for requesting and reaching a FEMA administrative approval of State and local plans, findings, and determinations on the current status of emergency planning and preparedness around particular sites, referred to as interim findings, will be provided by FEMA for use as needed in the NRC licensing process. Such findings will be provided by FEMA on mutually agreed to schedules or on specific NRC request. The request and findings will normally be by written communications between the co-chairs of the NRC/FEMA Steering Committee. An interim finding provided under this arrangement will be an extension of FEMA's procedures for review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR part 350. It will be based on the review of currently available plans and, if appropriate, joint exercise results related to a specific nuclear power plant site.

If the review involves an application under 10 CFR part 52 for an early site permit, the NRC will forward to FEMA pertinent information provided by the applicant and consult with FEMA as to whether there is any significant impediment to the development of offsite emergency plans. As appropriate, depending upon the nature of information provided by the applicant, the NRC will also request that FEMA determine whether major features of offsite emergency plans submitted by the applicant are acceptable,

or whether offsite emergency plans submitted by the applicant are adequate, as discussed below.

An interim finding based only on the review of currently available offsite plans will include an assessment as to whether these plans are adequate when measured against the standards and criteria of NUREG-0654/FEMA-REP-1, and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be implemented. The finding will indicate one of the following conditions: (1) Plans are adequate and there is reasonable assurance that they can be implemented with only limited or no corrections needed; (2) plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment) or (3) plans are inadequate and cannot be implemented until they are revised to correct deficiencies noted in the Federal review.

If, in FEMA's view, the plans that are available are not completed or are not ready for review, FEMA will provide NRC with a status report delineating milestones for preparation of the plan by the offsite authorities as well as FEMA's actions to assist in timely development and review of the plans.

An interim finding on preparedness will be based on review of currently available plans and joint exercise results and will include an assessment as to (1) whether offsite emergency plans are adequate as measured against the standards and criteria of NUREG-0654/FEMA-REP-1 and (2) whether the exercise(s) demonstrated that there is reasonable assurance that the plans can be implemented.

An interim finding on preparedness will indicate one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in an exercise; (2) there are deficiencies that must be corrected; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision.

3. To assume responsibility, as a supplement to State, local, and utility efforts, for radiological emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments which delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [Current assignments are in 44 CFR part 351, March 11, 1982. (47 FR 10758)]

NRC-The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the

Atomic Energy Act does not specifically require emergency plans and related preparedness measures, the NRC requires consideration of overall emergency preparedness as a part of the licensing process. The NRC rules (10 CFR 50.33, 50.34, 50.47, 50.54, and appendix E to 10 CFR part 50, and 10 CFR part 52) include requirements for the licensee's emergency plans.

Specifically, the NRC responsibilities for radiological emergency preparedness are:

1. To assess licensee emergency plans for adequacy. This review will include organizations with whom licensees have written agreements to provide onsite support services under emergency conditions.
2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).
3. To review the FEMA findings and determinations as to whether offsite plans are adequate and can be implemented.
4. To make radiological health and safety decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite as determined by the NRC and offsite as determined by FEMA and reviewed by NRC) such as assurance for continued operation, for issuance of operating licenses, or for taking enforcement actions, such as notices of violations, civil penalties, orders, or shutdown of operating reactors.

### *III. Areas of Cooperation*

#### *A. NRC Licensing Reviews*

FEMA will provide support to the NRC for licensing reviews related to reactors, fuel facilities, and materials licensees with regard to the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This will include timely submittal of an evaluation suitable for inclusion in NRC safety evaluation reports.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility or materials license review, NRC will identify those fuel and materials licensees with potential for significant accidental offsite radiological releases and transmit a request for review to FEMA as the emergency plans are completed.

FEMA routine support will include providing assessments, findings and determinations (interim and final) on offsite plans and preparedness related to reactor license reviews. To support its findings and determinations, FEMA will make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearing boards and administrative law judges, for any court actions, and during any related discovery proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. FEMA counsel will normally present FEMA witnesses and be permitted, at the discretion of the NRC licensing board, to cross-examine the witnesses of parties, other than the NRC witnesses, on matters involving FEMA findings and determinations, policies, or operations; however, FEMA will not be asked to testify on status reports. FEMA is not a party to NRC proceedings and, therefore, is not subject to formal discovery requirements placed upon parties to NRC proceedings. Consistent with available resources, however, FEMA will respond informally to discovery requests by parties. Specific assignment of professional responsibilities between NRC and FEMA counsel will be primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned, resolution of any differences will be made by the General Counsel of FEMA and the General Counsel of the NRC or their designees. NRC will request the presiding Board to place FEMA on the service list for all litigation in which it is expected to participate.

Nothing in this MOU shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

#### *B. FEMA Review of Offsite Plans and Preparedness*

NRC will assist in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees (RAC). FEMA will chair the Regional Assistance Committees. Consistent with NRC's statutory responsibility, NRC will recognize FEMA as the interface with State and local governments for interpreting offsite radiological emergency planning and preparedness criteria as they affect those governments and for reporting to those governments the results of any evaluation of their radiological emergency plans and preparedness.

Where questions arise concerning the interpretation of the criteria, such questions will continue to be referred to FEMA Headquarters, and when appropriate, to the NRC/FEMA Steering Committee to assure uniform interpretation.

#### *C. Preparation for and Evaluation of Joint Exercises*

FEMA and NRC will cooperate in determining exercise requirements for licensees, and State and local governments. They will also jointly observe and evaluate exercises. NRC and FEMA will institute procedures to enhance the review of objectives and scenarios for joint exercises. This review is to

assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness capabilities can be based. The NRC/FEMA procedures will provide for the availability of exercise objectives and scenarios sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA and correction of any deficiencies by the licensee. The failure of a licensee to develop a scenario that adequately addresses both onsite and offsite considerations may result in NRC taking enforcement actions.

The FEMA reports will be a part of an interim finding on emergency preparedness; or will be the result of an exercise conducted pursuant to FEMA's review and approval procedures under 44 CFR part 350 and NRC's requirement under 10 CFR part 50, appendix E, Section IV.F. Exercise evaluations will identify one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in the exercise; (2) there are deficiencies that must be corrected; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision. The schedule for issuance of the draft and final exercise reports will be as shown in FEMA-REP-14 (Radiological Emergency Preparedness Exercise Manual).

The deficiency referred to in (2) above is defined as an observed or identified inadequacy of organizational performance in an exercise that could cause a finding that offsite emergency preparedness is not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of a radiological emergency to protect the health and safety of the public living in the vicinity of a nuclear power plant. Because of the potential impact of deficiencies on emergency preparedness, they should be corrected within 120 days through appropriate remedial actions, including remedial exercises, drills, or other actions.

Where there are deficiencies of the types noted above, and when there is a potential for remedial actions, FEMA Headquarters will promptly (1–2 days) discuss these with NRC Headquarters. Within 10 days of the exercise, official notification of identified deficiencies will be made by FEMA to the State, NRC Headquarters, and the RAC with an information copy to the licensee. NRC will formally notify the licensee of the deficiencies and monitor the licensee's efforts to work with State and local authorities to correct the deficiencies. Approximately 60 days after official notification of the deficiency, the NRC, in consultation with FEMA, will assess the progress being made toward resolution of the deficiencies.

#### D. Withdrawal of Reasonable Assurance Finding

If FEMA determines under 44 CFR 350.13 of its regulations that offsite emergency plans or preparedness are not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of radiological emergency to protect the health and safety of the public, FEMA shall, as described in its rule, withdraw approval.

Upon receiving notification of such action from FEMA, the NRC will promptly review FEMA's findings and determinations and formally document the NRC's position. When, as described in 10 CFR 50.54(s)(2)(ii) and 50.54(s)(3) of its regulations, the NRC finds the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the NRC will notify the affected licensee accordingly and start the "120-day clock."<sup>2</sup>

#### E. Emergency Planning and Preparedness Guidance

NRC has lead responsibility for the development of emergency planning and preparedness guidance for licensees. FEMA has lead responsibility for the development of radiological emergency planning and preparedness guidance for State and local agencies. NRC and FEMA recognize the need for an integrated, coordinated approach to radiological emergency planning and preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on such guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance.

#### F. Support for Document Management System

FEMA and NRC will each provide the other with continued access to those automatic data processing support systems which contain relevant emergency preparedness data.

<sup>2</sup>Per 10 CFR 50.54(s)(2)(ii), the Commission will determine whether the reactor shall be shut down or other appropriate enforcement actions if such conditions are not corrected within four months. The NRC is not limited by this provision of the rule, for, as stated in 10 CFR 50.54(s)(3), "Nothing in this paragraph shall be construed as limiting the authority of the Commission to take action under any other regulation or authority of the Commission or at any time other than that specified in this paragraph" (emphasis added).

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### G. Ongoing NRC Research and Development Programs

Ongoing NRC and FEMA research and development programs that are related to State and local radiological emergency planning and preparedness will be coordinated. NRC and FEMA will each provide opportunity for the other agency to review and comment on relevant research and development programs prior to implementing them.

### H. Public Information and Education Programs

FEMA will take the lead in developing public information and educational programs. NRC will assist FEMA by reviewing for accuracy educational materials concerning radiation, and its hazards and information regarding appropriate actions to be taken by the general public in the event of an accident involving radioactive materials.

### I. Recovery from Disasters Affecting Offsite Emergency Preparedness

Disasters that destroy roads, buildings, communications, transportation resources or other offsite infrastructure in the vicinity of a nuclear power plant can degrade the capabilities of offsite response organizations in the 10-mile plume emergency planning zone. Examples of events that could cause such devastation are hurricanes, tornadoes, earthquakes, tsunamis, volcanic eruptions, major fires, large explosions, and riots.

If a disaster damages the area around a licensed operating nuclear power plant to an extent that FEMA seriously questions the continued adequacy of offsite emergency preparedness, FEMA will inform the NRC promptly. Likewise, the NRC will inform FEMA promptly of any information it receives from licensees, its inspectors, or others, that raises serious questions about the continued adequacy of offsite emergency preparedness. If FEMA concludes that a disaster-initiated review of offsite radiological emergency preparedness is necessary to determine if offsite emergency preparedness is still adequate, it will inform the NRC in writing, as soon as practicable, including a schedule for conduct of the review. FEMA will also give the NRC (1) interim written reports of its findings, as appropriate, and (2) a final written report on the results of its review.

The disaster-initiated review is performed to reaffirm the radiological emergency preparedness capabilities of affected offsite jurisdictions located in the 10-mile emergency planning zone and is not intended to be a comprehensive review of offsite plans and preparedness.

The NRC will consider information provided by FEMA Headquarters and pertinent findings from FEMA's disaster-initiated review in making decisions regarding the re-

start or continued operation of an affected operating nuclear power reactor. The NRC will notify FEMA Headquarters, in writing, of the schedule for restart of an affected reactor and keep FEMA Headquarters informed of changes in that schedule.

### IV. NRC/FEMA Steering Committee

The NRC/FEMA Steering Committee on Emergency Preparedness will continue to be the focal point for coordination of emergency planning and preparedness. As discussed in Section I of this agreement, response activities between these two agencies are addressed in a separate MOU. The Steering Committee will consist of an equal number of members to represent each agency with one vote per agency. When the Steering Committee cannot agree on the resolution of an issue, the issue will be referred to NRC and FEMA management. The NRC members will have lead responsibility for licensee planning and preparedness and the FEMA members will have lead responsibility for offsite planning and preparedness. The Steering Committee will assure coordination of plans and preparedness evaluation activities and revise, as necessary, acceptance criteria for licensee, State and local radiological emergency planning and preparedness. NRC and FEMA will then consider and adopt criteria, as appropriate, in their respective jurisdictions. (See Attachment 1).

### V. Working Arrangements

A. The normal point of contact for implementation of the points in this MOU will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out.

### VI. Memorandum of Understanding

A. This MOU shall be effective as of date of signature and shall continue in effect unless terminated by either party upon 30 days notice in writing.

B. Amendments or modifications to this MOU may be made upon written agreement by both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: June 17, 1993.

James M. Taylor,

*Executive Director for Operations.*

Dated: June 17, 1993.

Approved for the Federal Emergency Management Agency.

Richard W. Krimm,

*Acting Associate Director, State and Local Programs and Support.*



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### ATTACHMENT 1—FEMA/NRC STEERING COMMITTEE

#### *Purpose*

Assure coordination of efforts to maintain and improve emergency planning and preparedness for nuclear power reactors as described in the NRC and FEMA rules and the NRC/FEMA MOU on Radiological Emergency Planning and Preparedness. Coordinate consistent criteria for licensee, State and local emergency plans and preparedness.

#### *Membership*

The NRC and FEMA consignees of this MOU will designate respective co-chairs for the Steering Committee. The designated co-chairs will, in turn, appoint their respective members to the Committee.

#### *Membership Changes*

Changes to the membership of the NRC/FEMA Steering Committee may be made by the co-chairs representing the agency whose member is being changed.

#### *Operating Procedures*

The Steering Committee will maintain a record of each meeting to include identification of issues discussed and conclusions reached. No meeting will be held without the attendance and participation of at least the co-chairs or two assigned members of each agency.

#### *Coordination*

When items involving responsibilities of other NRC or FEMA offices are discussed, the affected offices will be contacted as appropriate.

[58 FR 47997, Sept. 14, 1993]

## **PART 354—FEE FOR SERVICES TO SUPPORT FEMA'S OFFSITE RADIO- LOGICAL EMERGENCY PRE- PAREDNESS PROGRAM**

Sec.

354.1 Purpose.

354.2 Scope of this regulation.

354.3 Definitions.

354.4 Assessment of fees.

354.5 Description of site-specific, plume pathway EPZ biennial exercise-related component services and other services.

354.6 Billing and payment of fees.

354.7 Failure to pay.

AUTHORITY: Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Sec. 109, Pub. L. 96-295, 94 Stat. 780; Sec. 2901, Pub. L. 98-369, 98 Stat. 494; Title III, Pub. L. 103-327, 108 Stat. 2323-2325; Pub. L. 105-276, 112 Stat. 2502; EO 12148, 44 FR 43239, 3 CFR, 1979

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Comp., p. 412; EO 12657, 53 FR 47513, 3 CFR, 1988 Comp., p. 611.

SOURCE: 66 FR 32577, June 15, 2001, unless otherwise noted.

### **§ 354.1 Purpose.**

This part establishes the methodology for FEMA to assess and collect user fees from Nuclear Regulatory Commission (NRC) licensees of commercial nuclear power plants to recover at least 100 percent of the amounts that we anticipate to obligate for our Radiological Emergency Preparedness (REP) Program as authorized under Title III, Public Law 105-276, 112 Stat. 2461, 2502. Public Law 105-276 established in the Treasury a Radiological Emergency Preparedness Fund, to be available under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et. seq.), and under Executive Order 12657 (3 CFR, 1988 Comp., p. 611), for offsite radiological emergency planning, preparedness, and response. Beginning in fiscal year 1999 and thereafter, the Director of FEMA must publish fees to be assessed and collected, applicable to persons subject to FEMA's radiological emergency preparedness regulations. The methodology for assessment and collection of fees must be fair and equitable and must reflect the full amount of costs of providing radiological emergency planning, preparedness, response and associated services. Our assessment of fees include our costs for use of agency resources for classes of regulated persons and our administrative costs to collect the fees. Licensees deposit fees by electronic transfer into the Radiological Emergency Preparedness Fund in the U.S. Treasury as offsetting collections.

### **§ 354.2 Scope of this regulation.**

The regulation in this part applies to all persons or licensees who have applied for or have received from the NRC:

(a) A license to construct or operate a commercial nuclear power plant;

(b) A possession-only license for a commercial nuclear power plant, with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements;

(c) An early site permit for a commercial nuclear power plant;

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(d) A combined construction permit and operating license for a commercial nuclear power plant; or

(e) Any other NRC licensee that is now or may become subject to requirements for offsite radiological emergency planning and preparedness.

### § 354.3 Definitions.

The following definitions of terms and concepts apply to this part:

*Biennial exercise* means the joint licensee/State and local government exercise, evaluated by FEMA, conducted around a commercial nuclear power plant site once every two years in conformance with 44 CFR part 350.

*EPZ* means emergency planning zone.

*Federal Radiological Preparedness Coordinating Committee (FRPCC)* means a committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Interior, Department of Energy, Department of Transportation, Department of Agriculture, Department of Commerce, Department of State, Department of Veterans Affairs, General Services Administration, National Communications System, the National Aeronautics and Space Administration and other Federal departments and agencies as appropriate.

*FEMA* means the Federal Emergency Management Agency.

*Fiscal Year* means the Federal fiscal year, which begins on the first day of October and ends on the thirtieth day of September.

*NRC* means the U. S. Nuclear Regulatory Commission.

*Obligate* or *obligation* means a legal reservation of appropriated funds for expenditure.

*Persons* or *Licensee* means the utility or organization that has applied for or has received from the NRC:

(1) A license to construct or operate a commercial nuclear power plant;

(2) A possession-only license for a commercial nuclear power plant, with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements;

(3) An early site permit for a commercial nuclear power plant;

(4) A combined construction permit and operating license for a commercial nuclear power plant; or

(5) Any other NRC license that is now or may become subject to requirements for offsite radiological emergency planning and preparedness activities.

*Plume pathway EPZ* means for planning purposes, the area within approximately a 10-mile radius of a nuclear plant site.

*RAC* means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce, Department of Interior, and other Federal departments and agencies as appropriate.

*REP* means Radiological Emergency Preparedness, as in FEMA's REP Program.

*Site* means the location at which one or more commercial nuclear power plants (reactor units) have been, or are planned to be built.

*Site-specific services* mean offsite radiological emergency planning, preparedness and response services provided by FEMA personnel and by FEMA contractors that pertain to a specific commercial nuclear power plant site.

*Technical assistance* means services provided by FEMA to accomplish offsite radiological emergency planning, preparedness and response, including provision of support for the preparation of offsite radiological emergency response plans and procedures, and provision of advice and recommendations for specific aspects of radiological emergency planning, preparedness and response, such as alert and notification and emergency public information.

*We, our, us,* means and refers to FEMA.

### § 354.4 Assessment of fees.

(a)(1) We assess user fees from licensees using a methodology that includes charges for REP Program services provided by both our personnel and our contractors. Beginning in FY 1995, we established a four-year cycle from FY 1995–1998 with predetermined user fee assessments that were collected each

year of the cycle. The following six-year cycle will run from FY 1999 through FY 2004. The fee for each site consists of two distinct components:

(i) A *site-specific, biennial exercise-related component* to recover the portion of the REP program budget associated only with plume pathway emergency planning zone (EPZ) biennial exercise-related activities. We determine this component by reviewing average biennial exercise-related activities/hours that we use in exercises conducted since the inception of our REP user fee program in 1991. We completed an analysis of REP Program activities/hours used during the FY 1991–1995 cycle at the end of that four-year cycle. We will make adjustments to the site-specific user fees for the next proposed FY 1999–2004 six-year cycle.

(ii) A *flat fee component* that is the same for each site and recovers the remaining portion of the REP Program budgeted funding that does not include biennial exercise-related activities.

(2) We will assess fees only for REP Program services provided by our personnel and by our contractors, and we will not assess fees for those services that other Federal agencies involved in the FRPCC or the RAC's provide.

(b) *Determination of site-specific, biennial exercise-related component for our personnel.* We will determine an average biennial exercise-related cost for our personnel for each commercial nuclear power plant site in the REP Program. We base this annualized cost (dividing the average biennial exercise-related cost by two) on the average number of hours spent by our personnel in REP exercise-related activities for each site. We will determine the average number of hours using an analysis of site-specific exercise activity spent since the beginning of our user fee program (1991). We determine the actual user fee assessment for this component by multiplying the average number of REP exercise-related hours that we determine and annualize for each site by the average hourly rate in effect for the fiscal year for a REP Program employee. We will revise the hourly rate annually to reflect actual budget and cost of living factors, but the number of annualized, site-specific exercise hours will remain constant for user fee

calculations and assessments throughout the six-year cycle. We will continue to track and monitor exercise activity during the six-year cycle, FY 1999–2004. We will make appropriate adjustments to this component to calculate user fee assessments for later six-year cycles.

(c) *Determination of site-specific, biennial exercise-related component for FEMA contract personnel.* We have determined an average biennial exercise-related cost for REP contractors for each commercial nuclear power plant site in the REP Program. We base this annualized cost (dividing the average biennial exercise-related cost by two) on the average costs of contract personnel in REP site-specific exercise-related activities since the beginning of our user fee program (1991). We will continue to track and monitor activity during the initial six-year cycle, FY 1999–2004, and we will make appropriate adjustments to this component for calculation of user fee assessments during subsequent six-year cycles.

(d) *Determination of flat fee component.* For each year of the six-year cycle, we recover the remainder of REP Program budgeted funds as a flat fee component. Specifically, we determine the flat fee component by subtracting the total of our personnel and contractor site-specific, biennial exercise-related components, as outlined in paragraphs (a) and (b) of this section, from the total REP budget for that fiscal year. We then divide the resulting amount equally among the total number of licensed commercial nuclear power plant sites (defined under 354.2) to arrive at each site's flat fee component for that fiscal year.

(e) *Discontinuation of charges.* When we receive a copy from the NRC of their approved exemption to 10 CFR 50.54(q) requirements stating that off-site radiological emergency planning and preparedness are no longer required at a particular commercial nuclear power plant site, we will discontinue REP Program services at that site. We will no longer assess a user fee for that site from the beginning of the next fiscal year.

**§ 354.5 Description of site-specific, plume pathway EPZ biennial exercise-related component services and other services.**

Site-specific and other REP Program services provided by FEMA and FEMA contractors for which FEMA will assess fees on licensees include the following:

(a) *Site-specific, plume pathway EPZ biennial exercise-related component services.* (1) Schedule plume pathway EPZ biennial exercises.

(2) Review plume pathway EPZ biennial exercise objectives and scenarios.

(3) Provide pre-plume pathway EPZ biennial exercise logistics.

(4) Conduct plume pathway EPZ biennial exercises, evaluations, and post exercise briefings.

(5) Prepare, review and finalize plume pathway EPZ biennial exercise reports, give notice and conduct public meetings.

(6) Activities related to Medical Services and other drills conducted in support of a biennial, plume pathway exercise.

(b) *Flat fee component services.* (1) Evaluate State and local offsite radiological emergency plans and preparedness.

(2) Schedule other than plume pathway EPZ biennial exercises.

(3) Develop other than plume pathway EPZ biennial exercise objectives and scenarios.

(4) Pre-exercise logistics for other than the plume pathway EPZ.

(5) Conduct other than plume pathway EPZ biennial exercises and evaluations.

(6) Prepare, review and finalize other than plume pathway EPZ biennial exercise reports, notice and conduct of public meetings.

(7) Prepare findings and determinations on the adequacy or approval of plans and preparedness.

(8) Conduct the formal 44 CFR part 350 review process.

(9) Provide technical assistance to States and local governments.

(10) Review licensee submissions pursuant to 44 CFR part 352.

(11) Review NRC licensee offsite plan submissions under the NRC/FEMA Memorandum of Understanding on Planning and Preparedness, and

NUREG-0654/FEMA-REP-1, Revision 1, Supplement 1. You may obtain copies of the NUREG-0654 from the Superintendent of Documents, U.S. Government Printing Office.

(12) Participate in NRC adjudication proceedings and any other site-specific legal forums.

(13) Alert and notification system reviews.

(14) Responses to petitions filed under 10 CFR 2.206.

(15) Congressionally-initiated reviews and evaluations.

(16) Responses to licensee's challenges to FEMA's administration of the fee program.

(17) Respond to actual radiological emergencies.

(18) Develop regulations, guidance, planning standards and policy.

(19) Coordinate with other Federal agencies to enhance the preparedness of State and local governments for radiological emergencies.

(20) Coordinate REP Program issues with constituent organizations such as the National Emergency Management Association, Conference of Radiation Control Program Directors, and the Nuclear Energy Institute.

(21) Implement and coordinate REP Program training with FEMA's Emergency Management Institute (EMI) to assure effective development and implementation of REP training courses and conferences.

(22) Participation of REP personnel as lecturers or to perform other functions at EMI, conferences and workshops.

(23) Any other costs that we incur resulting from our REP Program Strategic Review implementation and oversight working group activities.

(24) Costs associated with a transition phase should we decide to advertise and award a contract for technical support to the REP Program. Transition phase activities may include training new contractor personnel in the REP Exercise Evaluation and Planning courses, and on-the-job training for new evaluators at a select number of REP exercises.

(25) Services associated with the assessment of fees, billing, and administration of this part.

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(26) Disaster-initiated reviews and evaluations.

### § 354.6 Billing and payment of fees.

(a) *Electronic billing and payment.* We will deposit all funds collected under this part to the Radiological Emergency Preparedness Fund as offsetting collections, which will be available for our REP Program. The Department of the Treasury revisions to section 8025.30 of publication I-TFM 6-8000 require Federal agencies to collect funds by electronic funds transfer when such collection is cost-effective, practicable, and consistent with current statutory authority. Working with the Department of the Treasury we now provide for payment of bills by electronic transfers through Automated Clearing House (ACH) credit payments.

(b) We will send bills that are based on the assessment methodology set out in § 354.4 to licensees to recover the full amount of the funds that we budget to provide REP Program services. Licensees that have more than one site will receive consolidated bills. We will forward one bill to each licensee during the first quarter of the fiscal year, with payment due within 30 days. If we exceed our original budget for the fiscal year and need to make minor adjustments, the adjustment will appear in the bill for the next fiscal year.

### § 354.7 Failure to pay.

Where a licensee fails to pay a prescribed fee required under this part, we will implement procedures under 44 CFR part 11, subpart C, to collect the fees under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*).

## PARTS 355–359 [RESERVED]

## PART 360—STATE ASSISTANCE PROGRAMS FOR TRAINING AND EDUCATION IN COMPREHENSIVE EMERGENCY MANAGEMENT

Sec.

360.1 Purpose.

360.2 Description of program.

360.3 Eligible applicants.

360.4 Administrative procedures.

360.5 General provisions for State Cooperative Agreement.

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AUTHORITY: Reorganization Plan No. 3 (3 CFR, 1978 Comp., p. 329); E.O. 12127 (44 FR 19367); E.O. 12148 (44 FR 43239).

SOURCE: 46 FR 1271, Jan. 6, 1981, unless otherwise noted.

### § 360.1 Purpose.

The Emergency Management Training Program is designed to enhance the States' emergency management training program to increase State capabilities and those of local governments in this field, as well as to give States the opportunity to develop new capabilities and techniques. The Program is an ongoing intergovernmental endeavor which combines financial and human resources to fill the unique training needs of local government, State emergency staffs and State agencies, as well as the general public. States will have the opportunity to develop, implement and evaluate various approaches to accomplish FEMA emergency objectives as well as goals and objectives of their own. The intended result is an enhanced capability to protect lives and property through planning, mitigation, operational skill, and rapid response in case of disaster or attack on this country.

### § 360.2 Description of program.

(a) The program is designed for all States regardless of their present level of involvement in training or their degree of expertise in originating and presenting training courses in the past. The needs of individual States, difference in numbers to be trained, and levels of sophistication in any previous training program have been recognized. It is thus believed that all States are best able to meet their own unique situations and those of local government by being given this opportunity and flexibility.

(b) Each State is asked to submit an acceptable application, to be accompanied by a Training and Education (T&E) plan for a total of three years, only the first year of which will be required to be detailed. The remaining two year program should be presented in terms of ongoing training objectives and programs. In the first year plan applicants shall delineate their objectives in training and education, including a

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description of the programs to be offered, and identify the audiences and numbers to be trained. Additionally, the State is asked to note the month in which the activity is to be presented, the location, and cost estimates including instructional costs and participant's travel and per diem. These specifics of date, place, and costs will be required for the first year of any three year plan. A three year plan will be submitted each year with an application. Each negotiated agreement will include a section of required training (Radiological Defense), and a section including optional courses to be conducted in response to State and local needs.

(c) FEMA support to the States in their training program for State and local officials, has been designed around three Program elements. Each activity listed in the State Training and Education (T&E) Plan will be derived from the following three elements:

(1) *Government Conducted Courses:* Such courses require the least capability on the part of the State. They are usually conducted through provisions in a FEMA Regional Support Contract and/or FEMA or other Federal agency staff. The State's responsibilities fall primarily into administrative areas of recruiting participants, making all arrangements for the facilities needed for presentation of the course, and the handling of the cost reimbursement to participants, though State staff may participate as instructors. These courses for example include:

- (i) Career Development Courses: Phases I, II, and III,
- (ii) Radiological Officer and Instructor Courses,
- (iii) Technical Workshops on Disaster Recovery or Hazard Mitigation.

(2) *Government and recipient conducted courses:* Responsibilities in these courses fall jointly upon Federal and State government as agreed in the planning for the course. Courses in this category might include:

- (i) Emergency Management Workshops,
- (ii) Multijurisdictional Emergency Operations Simulation Training.

In this category also, it is expected that the State will be responsible for administrative and logistical requirements, plus any instructional activity as agreed upon prior to the conduct of the course.

(3) *Recipient conducted courses:* This element requires the greatest degree of sophistication in program planning and delivery on the part of the State. Training events proposed by the State must be justified as addressing Emergency Management Training Program objectives. Additionally, they must address State or community needs and indicate the State's ability to present and carry out the Program of Instruction. Courses in this category could include:

- (i) Radiological Monitoring,
- (ii) Emergency Operations Simulating Training,
- (iii) Shelter Management.

(d) In order that this three year comprehensive Training and Education Program planning can proceed in a timely and logical manner, each State will be provided three target appropriation figures, one for each of the three program years. States will develop their proposals, using the target figure to develop their scope of work. Adjustments in funding and the scope of work will be subject to negotiation before finalization. Both the funding and the scope of work will be reviewed each year and adjustments in the out years will reflect increased sophistication and expertise of the States as well as changing training needs within each State.

(e)(1) FEMA funding through the State Cooperative Agreement for the training activities is to be used for travel and per diem expenses of students selected by the States for courses reflecting individually needed or required training. Additionally funds may be expended for course materials and instructor expenses. The funding provided in the State Cooperative Agreement is not for the purpose of conducting ongoing State activities or for funding staff positions to accomplish work to be performed under this Agreement. Nor is the Agreement for the purpose of purchasing equipment which may be obtained with the help of Personnel and Administrative funds. In

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cases where equipment has been identified as needed in the scope of work submitted with the application, and where it serves as an outreach to a new audience or methodology, equipment purchase may be approved at the time of initial application approval.

(2) Allowable cost will be funded at 100%.

[46 FR 1271, Jan. 6, 1981, as amended at 48 FR 9646, Mar. 8, 1983]

#### § 360.3 Eligible applicants.

Each of the 50 States, independent commonwealths, and territories is eligible to participate in a State Cooperative Agreement with FEMA. The department, division, or agency of the State government assigned the responsibility for State training in comprehensive emergency management should file the application.

#### § 360.4 Administrative procedures.

(a) *Award.* Each State desiring to participate will negotiate the amount of financial support for the training and education program. Deciding factors will be the scope of the program, a prudent budget, the number of individuals to be trained, and variety of audiences included which are in need of training. All these factors are part of the required application as discussed in § 360.2.

(b) *Period of agreement.* Agreements will be negotiated annually and will be in effect for a period of 12 months. Each agreement, however, will include a scope of work for three years as reflected in § 360.2(b) to give continuity to the total training and education program.

(c) *Submission procedure.* Each State applicant shall comply with the following procedures:

(1) *Issuance of a request for application.* Each State emergency management agency will receive a Request for Application Package from the State's respective FEMA Regional Director.

(2) *How to submit.* Each State shall submit the completed application package to the Regional Director of the Appropriate Region.

(3) *Application package.* The Application Package should include:

(i) A transmittal letter signed by the State Director of the agency tasked

with emergency management responsibilities for that State.

(ii) A three year projected training and education scope of work including both "required" training and "optional" courses. The first of the projected three year program is to be detailed as to list of courses, description of training to be offered, audiences to be reached and numbers to be trained. Dates and locations of training as well as costs of delivery and student travel and per diem are to be estimated. Special instructions for this portion of the submittal will be included in the Application Package.

(iii) Standard Form 270 "Request for Advance or Reimbursement" as required by OMB Circular A-102 and FEMA General Provisions for Cooperative Agreements.

(d) *Reporting agreements.* Recipients of State Agreement benefits will report quarterly during the Federal Fiscal year, directly to the Regional Director of their respective Regions. The report should include a narrative of the training programs conducted accompanied by rosters for each event, agenda, and a summary financial statement on the status of the Agreement funds. Any course or training activity included in the Scope of Work and not presented as scheduled should be explained in detail as to the reason for cancellation in the quarterly report. The costs allocated to this cancelled activity should be reprogrammed to another training activity approved by the Regional Director no later than the last day of the 3rd quarter, or released to the Region. An evaluation of the degree to which objectives were met, the effectiveness of the methodology, and the appropriateness of the resources and references used should also be included in the quarterly report. The report is due in the Regional Office no later than the 15th day of January, April, and July. A final report for the year is due the 15th of October.

#### § 360.5 General provisions for State Cooperative Agreement.

The legal funding instrument for the State Assistance Program for Training and Education FEMA is the State Cooperative Agreement. All States will

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be required to comply with FEMA General Provisions for the State Cooperative Agreement. The General Provisions for the State Cooperative Agreement will be provided to the States as part of the Request for Application package. The General Provisions will become part of the Cooperative Agreement.

### PART 361—NATIONAL EARTHQUAKE HAZARDS REDUCTION ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

#### Subpart A—Earthquake Hazards Reduction Assistance Program

Sec.

- 361.1 Purpose.
- 361.2 Definitions.
- 361.3 Project description.
- 361.4 Matching contributions.
- 361.5 Criteria for program assistance, matching contributions, and return of program assistance funds.
- 361.6 Documentation of matching contributions.
- 361.7 General eligible expenditures.
- 361.8 Ineligible expenditures.

#### Subpart B [Reserved]

AUTHORITY: Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. 7701 *et seq.*; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12381, 47 FR 39795, 3 CFR, 1982 Comp., p. 207.

SOURCE: 57 FR 34869, Aug. 7, 1992, unless otherwise noted.

#### Subpart A—Earthquake Hazards Reduction Assistance Program

##### § 361.1 Purpose.

This part prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA) and States in the administration of FEMA's earthquake hazards reduction assistance program, and establishes the criteria for cost-sharing.

##### § 361.2 Definitions.

*Cash Contribution* means the State cash outlay (expenditure), including the outlay of money contributed to the State by other public agencies and institutions, and private organizations

and individuals. All expenditures must be listed in the project's approved budget.

*Certification* represents the Governor's written assurance describing the steps State agencies will take toward meeting the 50 percent cash contribution required following the third year of program funding. The letter of certification is intended to assist the State maintain a commitment to and plan for securing the future cash match with the long-range goal of developing an ongoing, rather than a short-term, State program.

*Cost Sharing and Matching* represent that portion of project costs not borne by the Federal Government.

*Eligible Activities* are activities for which FEMA may provide funding to States under this section. They include specific activities or projects related to earthquake hazards reduction which fall into one or more of the following categories: Preparedness and response planning; mitigation planning and implementation, including inventories preparation, seismic safety inspections of critical structures and lifelines, updating building and zoning codes and ordinances to enhance seismic safety; and public awareness and education. The activities that will actually be funded shall be determined through individual negotiations between FEMA and the States (see criteria in § 361.3(3)).

*In-kind contributions* represent the value of non-cash contributions provided by the States and other non-Federal parties. In-kind contributions may be in the form of charges for real property and non-expendable personal property and the value of goods and services directly benefiting and specifically identifiable to the States' earthquake hazards reduction projects.

*Project* means the complete set of approved earthquake hazards reduction activities undertaken by a State, or other jurisdiction, on a cost-shared basis with FEMA in a given Federal fiscal year.

*Project Period* is the duration of time over which an earthquake hazards reduction project is implemented.

*State* refers to the States of the United States of America, individually



or collectively, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Mariana Islands, and any other territory or possession of the United States. It also means local units of government or substate areas that include a number of local government jurisdictions.

*State Assistance* means the funding provided under this subpart by FEMA through the National Earthquake Hazards Reduction Program (NEHRP) to States to develop State programs specifically related to earthquake hazards reduction. The term also includes assistance to local units of government or substate areas, such as a group of several counties.

*Target Allocation* is the maximum amount of FEMA earthquake program funds presumably available to an eligible State in a fiscal year. It is based primarily upon the total amount of State assistance funds available to FEMA annually, the number of eligible States, and a nationally standardized comparison of these States' seismic hazard and population-at-risk. The target allocation is not necessarily the amount of funding that a State will actually receive from FEMA. Rather, it represents a planning basis of negotiations between the State and its FEMA Regional Office which will ultimately determine the actual amount of earthquake State assistance to be provided by FEMA.

### § 361.3 Project description.

(a) An objective of the Earthquake Hazards Reduction Act is to develop, in areas of seismic risk, improved understanding of and capability with respect to earthquake-related issues, including methods of mitigating earthquake damage, planning to prevent or minimize earthquake damage, disseminating warnings of earthquakes, organizing emergency services, and planning for post-earthquake recovery. To achieve this objective, FEMA has implemented an earthquake hazards reduction assistance program for State and local governments in seismic risk areas.

(b) This assistance program provides funding for earthquake hazards reduction activities which are eligible ac-

cording to the definition in § 361.2. The categories, or program elements, listed therein comprise a comprehensive earthquake hazards reduction project for any given seismic hazard area. Key aspects of each of these elements are as follows:

(1) *Mitigation* involves developing and implementing strategies for reducing losses from earthquakes by incorporating principles of seismic safety into public and private decisions regarding the siting, design, and construction of structures (i.e., updating building and zoning codes and ordinances to enhance seismic safety), and regarding buildings' nonstructural elements, contents and furnishings. Mitigation includes preparing inventories of and conducting seismic safety inspections of critical structures and lifelines, and developing plans for identifying and retrofitting existing structures that pose threats to life or would suffer major damage in the event of a serious earthquake.

(2) *Preparedness/response planning* are closely related and usually considered as one comprehensive activity. They do differ, however, in that preparedness planning involves those efforts undertaken before an earthquake to prepare for or improve capability to respond to the event, while response planning can be defined as the planning necessary to implement an effective response once the earthquake has occurred. Preparedness/response planning usually considers functions related to the following:

- (i) Rescue and fire services;
- (ii) Medical services;
- (iii) Damage assessments;
- (iv) Communications;
- (v) Security;
- (vi) Restoration of lifeline and utility services;
- (vii) Transportation;
- (viii) Sheltering, food and water supplies;
- (ix) Public health and information services;
- (x) Post-disaster recovery and the return of economic stability;
- (xi) Secondary impacts, such as dam failures, toxic releases, etc.; and
- (xii) Organization and management.

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(3) *Public awareness/earthquake education* activities are designed to increase public awareness of earthquakes and their associated risks, and to stimulate behavioral changes to foster a self-help approach to earthquake preparedness, response, and mitigation. Audiences that may be targeted for such efforts include:

- (i) The general public;
- (ii) School populations (administrators, teachers, students, and parents);
- (iii) Special needs groups (e.g., elderly, disabled, non-English speaking);
- (iv) Business and industry;
- (v) Engineers, architects, builders;
- (vi) The media; and
- (vii) Public officials.

(4) *Other Activities* in support of those listed in § 361.3(b)(1), (b)(2), and (b)(3) may include, but are not limited to, State seismic advisory boards which provide State and local officials responsible for implementing earthquake hazards reduction projects with expert advice in a variety of fields; hazard identification which defines the potential for earthquakes and their related geological hazards in a particular area; and vulnerability assessments, also known as loss estimation studies, which provide information on the impacts and consequences of an earthquake on an area's resources, as well as opportunities for earthquake hazards mitigation.

(c) State eligibility for financial assistance to States under this section is determined by FEMA based on a combination of the following criteria:

(1) Seismic hazard, including the historic occurrence of damaging earthquakes, as well as probable seismic activity;

(2) Total population and major urban concentrations exposed to such risk; and

(3) Other factors, the loss, damage, or disruption of which by a severe earthquake would have serious national impacts upon national security, such as industrial concentrations, concentrations or occurrences of natural resources, financial/economic centers and national defense facilities.

(d) Each fiscal year, FEMA will establish a target allocation of earthquake program funds for each eligible State.

(e) The specific activities, and the distribution of funds among them, that will be undertaken with this assistance will be determined during the annual Comprehensive Cooperative Agreement (CCA) negotiations between FEMA and the State, and will be based upon the following:

(1) The availability of information regarding identification of seismic hazards and vulnerability to those hazards;

(2) Earthquake hazards reduction accomplishments of the State to date;

(3) State and Federal priorities for needed earthquake hazards reduction activities; and

(4) State and local capabilities with respect to staffing, professional expertise, and funding.

(f) As a condition of receiving FEMA funding, a percentage of the amount of the total State project (FEMA State assistance, combined with the State match) must be spent for activities under the Mitigation Planning element. The percentage, to be determined by FEMA, may be increased by no more than 5 percent annually, beginning at 15 percent in fiscal year 1991 with a limit of 50 percent of the total State project. The increase will take into account the amount of time a State has been participating in the program. States may expend more than the required percentage of funding on eligible mitigation activities.

(g) The State match may be distributed among the eligible activities in any manner that is mutually agreed upon by FEMA and the State in the CCA negotiations.

(h) Negotiations between FEMA and the State regarding the scope of work and the determination of the amount of State assistance to be awarded shall consider earthquake hazards reduction activities previously accomplished by the State, as well as the quality of their performance.

### § 361.4 Matching contributions.

(a) All State assistance will be cost shared after the first year of funding. States which received a grant before October 1, 1990, which included the 50 percent non-Federal contribution to the State program, will continue to

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match the Federal funds on a 50 percent cash match basis.

(b) States which did not receive a grant before October 1, 1990, will assume cost sharing on a phased-in basis over a period of four years with the full cost sharing requirements being implemented in the fourth year. The sequence is as follows:

(1) For the first fiscal year, cost sharing will be voluntary. FEMA will provide State assistance without requiring a State match. Those States that are able to cost-share are encouraged to do so (on either a cash or in-kind basis).

(2) For the second fiscal year, the minimum acceptable non-Federal contribution is 25 percent of the total project cost, which may be satisfied through an in-kind contribution. Those States that are able to cost-share on a cash-contribution basis are encouraged to do so.

(3) For the third fiscal year, the minimum acceptable non-Federal contribution is 35 percent of the total project cost, which may be satisfied through an in-kind contribution. Those States that are able to cost-share on a cash-contribution basis are encouraged to do so.

(4) For the fourth and subsequent fiscal years, full cost sharing will be implemented, requiring a minimum of a 50 percent non-Federal contribution to a State program, with this share required to be cash. In-kind matching will no longer be acceptable. Thus, every dollar FEMA provides to a State must be matched by one dollar from the State. States that can contribute an amount greater than that required by the match are permitted and encouraged to do so. However, State assistance will not exceed the established target allocation.

(c) The State contribution need not be applied at the exact time of the obligation of the Federal funds. However, the State full matching share must be obligated by the end of the project period for which the State assistance has been made available for obligation under an approved program or budget.

(d) In the event a State interrupts its participation in this program, if it later elects to participate again, the nature and amount of that State's cost sharing shall be determined by the reg-

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ulations then in effect, taking into account the number of years in which the State previously participated.

### **§ 361.5 Criteria for program assistance, matching contributions, and return of program assistance funds.**

(a) In order to qualify for assistance, a State must:

(1) Demonstrate that the assistance will result in enhanced seismic safety in the State;

(2) Provide a share of the costs of the activities for which assistance is being given, in accordance with § 361.4; and

(3) Demonstrate that it is taking actions to ensure its ability to meet the 50 percent cash contribution commitment either on an ongoing basis or for new States, by the fourth year of funding.

(i) The Governor of newly participating State must certify to the FEMA Regional Director the State will take steps to meet the 50 percent cash contribution requirement after the third year of funding. The specific steps to be taken will be outlined in the certification which must be submitted prior to the State receiving program funds.

(ii) The Governor must certify the State's continued commitment in the second and third years of funding. The certification will describe the progress made on the steps contained in the previous year's certification and steps to be taken in the future. The certification must be submitted to the Regional Director before the State will receive program funds.

(iii) If a State encounters difficulties meeting the 50 percent cash contribution requirement for the target allocation following the fourth year of funding, the Regional Director may require the Governor to continue certifying the State is working to resolve the difficulty.

(iv) A State will not receive Federal funds if it cannot provide the required cash contribution.

(b) The value of any resources accepted as a matching share under one Federal agreement or program cannot be counted again as a contribution under another.

(c) The State seeking the match shall submit documentation sufficient for

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FEMA to determine that the contribution meets the following requirements. The match shall be:

(1) Necessary and reasonable for proper, cost-effective and efficient administration of the project, allocable solely thereto, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State and local governments;

(2) Verifiable from the recipient State's records;

(3) Not allocable to or included as a cost of any other Federally financed program in either the current or a prior period;

(4) Authorized under State law;

(5) Consistent with any limitations or exclusions set forth in these regulations, Federal laws or other governing limitations as to types of cost items;

(6) Accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances;

(7) Provided for in the approved budget/workplan of the State; and

(8) Consistent with OMB Circular A-87, "Cost Principles for State and Local Governments," and with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(d) A State must submit and FEMA must approve a statement of work before the State receives any grant funds. The statement of work and target allocation of funds are based on a 12-month performance period. Except under extenuating circumstances, the funds initially obligated to the State will be based on the amount of time remaining in the performance period at the time the statement of work is approved. (Approved by the Office of Management and Budget under OMB control number 3067-0170.)

(e) States are expected to perform activities and therefore expend funds on a quarterly basis in accordance with the approved statement of work. At the end of the third quarter, State and FEMA regional office staff will review the State's accomplishments to date. Funds not expended in accordance with the approved statement of work by the end of the third quarter of the perform-

ance period will not be made available to the State unless the State can demonstrate, and FEMA approves, its ability to perform activities adequately resulting in the expenditure of the funds by the end of the performance period.

### § 361.6 Documentation of matching contributions.

(a) The statement of work provided by the State to FEMA describing the specific activities comprising its earthquake hazards reduction project, including the project budget, shall reflect a level of effort commensurate with the total of the State and FEMA contributions.

(b) The basis by which the State determines the value of an in-kind match must be documented and a copy retained as part of the official record.

(c) The State shall maintain all records pertaining to matching contributions for a three-year period after the date of submission of the final financial report required by the CCA, or date of audit, whichever date comes first.

### § 361.7 General eligible expenditures.

(a) Expenditures must be for activities described in the statement of work mutually agreed to by FEMA and the State during the annual negotiation process, or for activities that the State agrees to perform as a result of subsequent modifications to that statement of work. These activities shall be consistent with the definition of eligible activities in § 361.2.

(b) The following is a list of eligible expenditures. When items do not appear on the list they will be considered on a case-by-case basis for policy determinations, based on criteria set forth in § 361.5. All costs must be reasonable, and consistent with OMB Circular A-87.

(1) Direct and indirect salaries or wages (including overtime) of employees hired specifically for carrying out earthquake hazards reduction activities are eligible when engaged in the performance of eligible work.

(2) Reasonable costs for work performed by private contractors on eligible projects contracted for by the State.

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(3) Travel costs and per diem costs of State employees not to exceed the actual subsistence expense basis for the permanent or temporary activity, as determined by the State's cost principles governing travel.

(4) Non-expendable personal property, office supplies, and supplies for workshops; exhibits.

(5) A maximum of \$8,000 or 10 percent of the total project allocation, whichever is less, may be expended for personal computer equipment in the first year of program funding. A full-time earthquake staff person must be employed and the equipment must be dedicated entirely to the earthquake project.

(6) Meetings and conferences, when the primary purpose is dissemination of information relating to the earthquake hazards reduction project.

(7) Training which directly benefits the conduct of earthquake hazards reduction activities.

### § 361.8 Ineligible expenditures.

(a) Expenditures for anything defined as an unallowable cost by OMB Circular A-87.

(b) Federal funds may not be used for the purchase or rental of any equipment such as radio/telephone communications equipment, warning systems, and computers and other related information processing equipment, except as stated in § 361.7(b)(5). If a State wishes to use its matching funds for this purpose, it must:

(1) Document during the annual negotiation process with FEMA how this equipment will support the earthquake hazards reduction activities in its scope of work (see § 361.7(a)); and

(2) Claim as credit for its match, if the equipment is to be used for purposes in addition to support of earthquake hazards reduction activities, only that proportion of costs directly related to its earthquake hazards reduction project.

### Subpart B [Reserved]

## 44 CFR Ch. I (10-1-02 Edition)

### PART 362—CRITERIA FOR ACCEPTANCE OF GIFTS, BEQUESTS, OR SERVICES

Sec.

362.1 Purpose.

362.2 Definitions.

362.3 Criteria for determining acceptance.

AUTHORITY: 42 U.S.C. 7701, 7705c.

SOURCE: 59 FR 35631, July 13, 1994, unless otherwise noted.

#### § 362.1 Purpose.

This part establishes criteria for determining whether the Director may accept gifts, bequests, or donations of services, money or property for the National Earthquake Hazards Reduction Program (NEHRP), under section 9 of the National Earthquake Hazards Reduction Program Reauthorization Act, 42 U.S.C. 7705c.

#### § 362.2 Definitions.

As used in this part—

*Gifts of property* means a gratuitous, voluntary transfer or conveyance of ownership in property by one person to another without any consideration, including transfer by donation, devise or bequest.

*Gifts of services* means a gratuitous, voluntary offer of labor or professional work by one person to another without any compensation for that labor or professional work.

*Program Agencies* means the Federal Emergency Management Agency, the United States Geological Survey, the National Science Foundation, and the National Institute of Standards and Technology.

*Property* means real or personal property, tangible or intangible, including money, certificates of stocks, bonds, or other evidence of value.

*Services* means labor or professional work performed for the benefit of another or at another's command.

*Solicit* means to endeavor to obtain by asking or pleading.

#### § 362.3 Criteria for determining acceptance.

The following criteria shall be applied whenever a gift of property or gift

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of services is offered to the Director for the benefit of the National Earthquake Hazards Reduction Program.

(a) The gift of property or gift of services must clearly and directly further the objectives of the National Earthquake Hazards Reduction Program, as defined in 42 U.S.C. 7702.

(b) All gifts of property must be offered unconditionally, with sole discretion of use, administration and disposition of such property to be determined by the Director or his designee.

(c) The Director may accept and use gifts of services of voluntary and uncompensated personnel, and may provide transportation and subsistence as

authorized by 5 U.S.C. 5703 for persons serving without compensation.

(d) Employees of FEMA or the Program agencies may not solicit gifts of property, or gifts of services.

(e) Acceptance of gifts of property, or gifts of services must first be approved by the Office of the General Counsel, FEMA, for conformance with all applicable laws and regulations.

(f) In all cases where it is determined that the acceptance of a gift may create a conflict of interest, or the appearance of a conflict of interest, the gift will be declined.

## **PARTS 363–399 [RESERVED]**